



W.A.Nos.357 of 2021 etc., (batch cases)

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 04.01.2023

Judgment Pronounced on : **31.01.2023**

CORAM :

**THE HON'BLE MR.T.RAJA, ACTING CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

W.A.Nos.357, 2498, 183, 186 & 358 of 2021 and 463 of 2022
& W.P.Nos.7928, 7931, 10036, 7925, 10054, 12945 & 10047 of 2021 and
31776 & 31777 of 2017
& C.M.P.Nos.16241, 1419, 16243, 1424, 852, 855, 1421 & 1423 of 2021
and 3340 of 2022
& W.M.P.Nos.10692, 13747, 8468, 8472, 8477, 10680, 10684, 10690,
10672 & 10673 of 2021 and 15046 & 15041 of 2021

In W.A.No.357 of 2021 :

1. N.Devanathan
2. V.Viji
3. M/s.Martin Multi Projects (P) Ltd.,
Rep. by its Director ... Appellants

Versus

1. The State of Tamil Nadu,
Rep. by its Secretary to Government,
Housing and Urban Development Department,
Secretariat, Fort St. George,
Chennai - 600 009.
2. The Special Tahsildar (LA),
Housing Scheme No.3,
TATABAD, Sivanandha Colony,



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- Coimbatore - 641 012.
3. The Executive Engineer & Administrative Officer,
Coimbatore Housing Unit,
Tamil Nadu Housing Board,
TATABAD, Sivanandha Colony,
Coimbatore - 641 012.
 4. The Superintending Engineer,
Tamil Nadu Housing Board,
Salem Region, Coimbatore - 641 002.
 5. The Tahsildar,
Coimbatore North Taluk,
Coimbatore.
- ... Respondents

Prayer in W.A.No.357 of 2021 : Writ Appeal filed under Clause 15 of the Letters Patent against the order, dated 15.09.2020 in W.P.No.11535 of 2020.

In W.A.Nos.357 and 358 of 2021 :

For Appellants : Mr.P.S.Raman, Senior Counsel
Assisted by Mr.G.Sankaran
and Mr.C.Thirumaran

For Respondents : Mr.R.Shunmugasundaram,
Advocate General,
Assisted by Dr.R.Gouri,
M/s.A.G.Shakeenaa,
M/s.S.Sona Sathish Kumar and
M/s.C.Shyaamala,
Standing Counsel for RR-3 and 4

In W.A.No.2498 of 2021 :

For Appellant : Mr.P.S.Raman, Senior Counsel,
for Mr.R.N.Amarnath



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Additional Advocate General-II,
Assisted by M/s.C.Shyaamala,
Standing Counsel for R3
In W.A.No.183 of 2021 :

For Appellant : Mr.R.Shunmugasundaram,
Advocate General,
Assisted by Dr.R.Gouri,
M/s.A.G.Shakeenaa,
M/s.S.Sona Sathish Kumar and
M/s.C.Shyaamala,
Standing Counsel for sole appellant

For Respondents : Mr.P.S.Raman, Senior Counsel
Assisted by Mr.G.Sankaran
and Mr.C.Thirumaran

In W.A.No.186 of 2021 :

For Appellant : Mr.R.Shunmugasundaram,
Advocate General,
Assisted by Dr.R.Gouri,
M/s.A.G.Shakeenaa,
M/s.S.Sona Sathish Kumar and
M/s.C.Shyaamala,
Standing Counsel for sole appellant

For Respondents : Mr.P.S.Raman, Senior Counsel
for Mr.R.N.Amarnath

In W.A.No.463 of 2022 :

For Appellant : Mr.R.Shunmugasundaram,
Advocate General,
Assisted by Dr.R.Gouri,
M/s.A.G.Shakeenaa,



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M/s.S.Sona Sathish Kumar and
M/s.C.Shyaamala,
Standing Counsel for sole appellant

For Respondents : Mr.S.Prabakaran, Senior Counsel
Assisted by Mr.G.Sankaran

In W.P.Nos.7928, 7931, 10036 and 7925 of 2021 :

For Petitioners : Mr.S.Prabakaran, Senior Counsel
Assisted by Mr.G.Sankaran
and Mr.C.Thirumaran

For Respondents : Mr.P.Muthukumar,
State Government Pleader
Assisted by Mr.D.Murugan,
Standing Counsel

In W.P.Nos.10054 and 10047 of 2021 :

For Petitioners : Mr.P.Wilson, Senior Counsel
Assisted by Mr.G.Sankaran
and Mr.C.Thirumaran

For Respondents : Mr.S.Silambanan,
Additional Advocate General-II,
Assisted by Mr.D.Murugan

In W.P.No.12945 of 2021 :

For Petitioner : M/s.A.L.Gandhimathi, Senior Counsel
Assisted by Mr.A.R.Karthik Lakshmanan

For Respondents : Mr.P.Muthukumar,
State Government Pleader
Assisted by Mr.D.Murugan,
Standing Counsel

In W.P.Nos.31776 and 31777 of 2017 :

For Petitioner : Mr.P.Wilson, Senior Counsel



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Assisted by Mr.G.Sankaran
and Mr.C.Thirumaran

For Respondents : Mr.S.Silambanan,
(in W.P.No.31776 Additional Advocate General-II,
of 2017) Assisted by Mr.D.Murugan

For Respondents : Mr.P.Muthukumar,
(in W.P.No.31777 State Government Pleader
of 2017) Assisted by Mr.D.Murugan,
Standing Counsel

COMMON JUDGMENT

D.BHARATHA CHAKRAVARTHY, J.

A. The Context :

The State of Tamil Nadu sought to acquire various pieces of land under the *Land Acquisition Act, 1894* in *Vilankurichi, Vellakinar, Thudiyalur* and other villages around the city of *Coimbatore* so as to develop residential areas / colonies to cater to the growing residential/other needs of the city over a period of time (1990 – 2001) by separate and independent proceedings and passing separate awards in respect of each individual acquisition.

1.1. While so, the *Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013* (hereinafter



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referred to as '*New Act*') came into force with effect from 01.01.2014 (*vide* S.O. 3729(E)), in and by which, the *Land Acquisition Act, 1894* (hereinafter referred to as '*Repealed Act*') stood repealed. However, provisions were made for the purpose of continuing the incomplete land acquisition proceedings under the *Repealed Act* in Section 24 of the *New Act*. As per Section 24(1) of the *New Act*, if the proceedings are initiated under the *Repealed Act* and no award was passed, then the provisions in the *New Act*, relating to the determination of the compensation, shall apply. If an award has been passed, further proceedings shall continue in the *Repealed Act* itself as if the *Repealed Act* has not been repealed. An exception to this rule is made under Section 24(2) of the *New Act*, if the award has been made five years prior to the commencement of the *New Act* and if the proceedings are not complete and if the physical possession is not taken and the compensation has not been paid, then the proceedings are deemed to have been lapsed and the government has to initiate fresh proceedings under the *New Act* if it still chooses to do so.

1.2. The persons interested / owners of certain properties covered under five such awards passed by the State of Tamil Nadu are before this



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Court, claiming the benefit under Section 24(2) of the *New Act*, to declare that the land acquisition proceedings in respect of their lands stood lapsed.

The claims have been either allowed or dismissed by different judgments of the learned Single Judges and appeals have been filed by either side in respect thereof. Certain other Writ Petitions which were pending and arising out of the same awards, were also directed to be clubbed along with the Writ Appeals and hence, all these matters are taken up together and are dealt with by this common judgment.

B. Gamut of the Controversy :

2. The learned Advocate General, learned Additional Advocate General, learned Counsel appearing on behalf of the State / Housing Board and learned Senior Counsel appearing on behalf of the appellants / writ petitioners, all agree that the matter is no longer *res integra* being squarely answered authoritatively by the constitutional bench of the Hon'ble Supreme Court of India in ***Indore Development Authority Vs. Manoharlal and Ors.***¹, but, however, the narrow compass of the difference between both the sides is as to whether the writ petitioners / land owners will be entitled for declaration that the proceedings have lapsed within the parameters of the law laid down by ***Indore*** judgment (cited *supra*).

¹ (2020) 8 SCC 129



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C. The Law Laid Down by *Indore* Judgment:

3. Before proceeding to deal with the contentions in respect of each individual matters, it is necessary to restate the law laid down in *Indore* judgment (cited *supra*). While considering the conflicting views expressed by different Benches, by authoritatively interpreting Section 24(2) of the *New Act*, the Hon'ble Supreme Court of India held that:

3.1. So as to claim the benefit under Section 24(2) of the *New Act*, two conditions have to be satisfied. The first condition is that the award should have been passed five years prior to the coming into force of the *New Act*. In computing the said five years, the period of stay, if any, granted by the Courts have to be excluded.

3.2. The second condition is that Section 24(2) can be invoked only if the proceedings are incomplete and cannot be invoked in concluded matters and it is not a weapon to challenge the manner of taking possession or impropriety in payment/deposit of compensation.



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3.3. Even if the above two conditions are satisfied, still the proceedings in respect of such five year old awards would not lapse (i) if physical possession of the property is taken and (ii) if the compensation is paid. Even if one of the two exceptions exists, then there will be no lapse.

3.4. Further, interpreting the phrase taking of physical possession, it is laid down that it need not necessarily be the actual physical possession, but, taking possession by recording a *panchanama* / memorandum would also be sufficient.

3.5. Similarly, interpreting the term '*compensation has not been paid*', it is held that it is not necessary that the compensation should actually have been paid, but would be enough if it is tendered as per Section 31(1) of the *Repealed Act* and if refused by the land owner, a deposit before the Court is not always necessary and deposit in the treasury account bearing interest would also be sufficient compliance, wherever permitted by the rules.



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3.6. It is essential to extract the conclusions of Constitutional Bench of the Hon'ble Supreme Court of India in para No.366 of **Indore** judgment (cited *supra*) which reads as hereunder:-

" **366.** *In view of the aforesaid discussion, we answer the questions as under:*

366.1. *Under the provisions of Section 24(1)(a) in case the award is not made as on 1-1-2014, the date of commencement of the 2013 Act, there is no lapse of proceedings. Compensation has to be determined under the provisions of the 2013 Act.*

366.2. *In case the award has been passed within the window period of five years excluding the period covered by an interim order of the court, then proceedings shall continue as provided under Section 24(1)(b) of the 2013 Act under the 1894 Act as if it has not been repealed.*

366.3. *The word "or" used in Section 24(2) between possession and compensation has to be read as "nor" or as "and". The deemed lapse of land acquisition proceedings under Section 24(2) of the 2013 Act takes place where due to inaction of authorities for five years or more prior to commencement of the said Act, the possession of land has not been taken nor compensation has been paid. In other words, in case possession has been taken, compensation has not been paid then there is no lapse. Similarly, if compensation has been paid, possession has not been taken then there is no lapse.*



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366.4. *The expression “paid” in the main part of Section 24(2) of the 2013 Act does not include a deposit of compensation in court. The consequence of non-deposit is provided in the proviso to Section 24(2) in case it has not been deposited with respect to majority of landholdings then all beneficiaries (landowners) as on the date of notification for land acquisition under Section 4 of the 1894 Act shall be entitled to compensation in accordance with the provisions of the 2013 Act. In case the obligation under Section 31 of the Land Acquisition Act, 1894 has not been fulfilled, interest under Section 34 of the said Act can be granted. Non-deposit of compensation (in court) does not result in the lapse of land acquisition proceedings. In case of non-deposit with respect to the majority of holdings for five years or more, compensation under the 2013 Act has to be paid to the “landowners” as on the date of notification for land acquisition under Section 4 of the 1894 Act.*

366.5. *In case a person has been tendered the compensation as provided under Section 31(1) of the 1894 Act, it is not open to him to claim that acquisition has lapsed under Section 24(2) due to non-payment or non-deposit of compensation in court. The obligation to pay is complete by tendering the amount under Section 31(1). The landowners who had refused to accept compensation or who sought reference for higher compensation, cannot claim that the acquisition proceedings had lapsed under Section 24(2) of the 2013 Act.*

366.6. *The proviso to Section 24(2) of the 2013 Act is to be treated as part of Section 24(2), not part of Section 24(1)(b).*



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366.7. *The mode of taking possession under the 1894 Act and as contemplated under Section 24(2) is by drawing of inquest report/memorandum. Once award has been passed on taking possession under Section 16 of the 1894 Act, the land vests in State there is no divesting provided under Section 24(2) of the 2013 Act, as once possession has been taken there is no lapse under Section 24(2).*

366.8. *The provisions of Section 24(2) providing for a deemed lapse of proceedings are applicable in case authorities have failed due to their inaction to take possession and pay compensation for five years or more before the 2013 Act came into force, in a proceeding for land acquisition pending with the authority concerned as on 1-1-2014. The period of subsistence of interim orders passed by court has to be excluded in the computation of five years.*

366.9. *Section 24(2) of the 2013 Act does not give rise to new cause of action to question the legality of concluded proceedings of land acquisition. Section 24 applies to a proceeding pending on the date of enforcement of the 2013 Act i.e. 1-1-2014. It does not revive stale and time-barred claims and does not reopen concluded proceedings nor allow landowners to question the legality of mode of taking possession to reopen proceedings or mode of deposit of compensation in the treasury instead of court to invalidate acquisition."*

D. The Queries by the Court :



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4. As a matter of fact, during the course of hearing, this Court had, by an order, dated 24.11.2022, raised the following queries and sought for responses by the State / Housing Board in respect of each of the cases :

“ (a) Whether the physical possession of the lands in question covered in the respective survey numbers had been taken over?

(b) Whether the possession has been handed over to the Tamil Nadu Housing Board?

(c) Whether the compensation payable to the land owners has been deposited in the manner known to law before the Sub Court concerned under Section 31 of the Land Acquisition Act, 1894? If so, how much was the amount deposited?

(d) Whether the award notice under Section 11 is said to have been issued only to a dead person?

(e) Whether the award has been passed without obtaining prior approval of the competent authority?

(f) Whether there is any Panchnama to show the proof of taking over physical possession of the lands from the land owners?”

4.1. As a matter of fact, due responses have been filed in respect of each query in respect of every individual case, while certain documents



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which are already on record are also pointed to. In this background, we proceed to consider the individual matters.

E. W.A.No.183 of 2021 filed against W.P.No.10912 of 2020 :

5. This is an appeal filed by the Tamil Nadu State Housing Board. One *M.Palanisamy* and five others being the legal heirs of one *Marudhachala Gounder* filed W.P.No.10912 of 2020 to declare the land acquisition proceedings relating to their lands in S.F.Nos.3/2A, 4/3B1 and 4/3B2 situated at *Vellakinaru* village, *Coimbatore* district covered in award No.2 of 2001 has become lapsed by operation of Section 24(2) of the *New Act*. It is seen that the award was passed on 09.02.2001. As on date of the award, the said *Marudhachala Gounder* had approached this Court by way of W.P.No.12250 of 1999 and there was a stay of dispossession as on date of the award. Ultimately, the Writ Petition was dismissed on 27.12.2004 and W.A.No.835 of 2007, filed against the said order, was also dismissed on 27.06.2007. Thus, it can be seen that even after deducting the period of stay granted by the High Court, the award is more than five years prior to the date of commencement of the *New Act*. The proceedings are



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incomplete. Thus, the twin conditions for invoking Section 24(2) stands satisfied.

5.1. As far as taking possession is concerned, it can be seen that under the *Repealed Act*, when an award is passed under Section 11 and the same is duly served or a notice is issued in respect thereof to the land owners and thereafter, possession is taken under Section 16, only upon which the land vests with the government.

5.2. In the instant case, the award itself reads as follows:

" He has further stated that the notified person has approached the High Court Madras for exclusion of her portion of property from the acquisition in WP No. 12250/1999 dated 20.07.1999. She has got the order of stay for the dispossession of her portion of the property till the disposal of the writ petition."

Thus, it is clear that no possession was taken at the time of passing of the award or immediately thereof.

5.3. The only document which is relied upon by the State is the Possession Certificate, dated 14.08.2006, in which, it is claimed that the Assistant Revenue Inspector, Office of the Special Tahsildar is handing over



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the possession of the subject matter lands to the Surveyor of the Office of the Executive Engineer and Administrative Officer, *Coimbatore*, Housing Unit of the Tamil Nadu Housing Board. The said document is not a record relating to taking over of possession from the landowner. As held in the *Indore* judgment (cited *supra*), the possession should have been taken over from the land owner as per the provisions and rules made under the *Repealed Act*. If the land has been put into use by the Housing Board by way of developing any project and selling it to third parties and the third parties being in possession, then, the same would by itself be the evidence for taking physical possession. In this case, the landowners claim to be in possession of the land. However, even in the absence of actual use by the Housing Board, even a record by way of *panchnama* / memorandum for taking possession from the land owner would itself suffice.

5.4. Even as far as the State of Tamil Nadu is concerned, possession has to be taken by drawing a *panchanama* / memorandum. In this case, no such record of taking over possession is produced and the Possession Certificate, which is produced, does not relate to taking over of possession from the landowner. In this regard, the learned Advocate General placed



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strong reliance on the judgment in ***Tamil Nadu Housing Board Vs. A.Visvam (Dead) By LRs.***², in which, the Hon'ble Supreme Court of India while considering similar proof of the Land Acquisition Officer delivering possession to the Housing Board, relying upon the presumption under Section 114(e) of the *Evidence Act*, held that the officer had to be believed and therefore, held the Possession Certificate as a valid document evidencing taking of possession from the land owner. It is the further contention of the Advocate General that the above judgment has also been quoted with approval in ***Indore*** judgment (cited *supra*) and therefore, he would pray that the Possession Certificate be taken as proof for taking over of possession. We are unable to accept the said contention. Firstly, on a perusal of para No.7 of the judgment in ***Tamil Nadu Housing Board*** (cited *supra*), it can be seen that the Land Acquisition Officer was not a party to the proceedings. In such circumstances, in para No.9, after noting that taking possession by recording a memorandum or a *panchanama* by the Land Acquisition Officer, in the presence of witnesses, would itself constitute that taking possession of the land as it would be impossible to take physical possession of the acquired land and taking further cognizance of the fact that the land owner himself admitted title of the Housing Board

² (1996) 8 SCC 259



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and sought for allotment of alternative site, the Hon'ble Supreme Court of India held that the land owner cannot contend that the possession has not been taken.

5.5. In the present case, neither the presumption under Section 114(e) of the *Evidence Act* will come into play as the award itself records that possession cannot be taken in view of stay of dispossession and when the Land Acquisition Officer is a party to the present proceedings and there is no assertion on his part that he took possession on any particular date and means, the mere production of Possession Certificate is in no way can be the evidence of taking over of possession. Further, it is the contention of the learned Advocate General that the observation of the Division Bench in W.A.No.835 of 2007 that they are not expressing any opinion about the petitioners' entitlement under Section 48-B of the *Repealed Act*, itself would raise a presumption, that possession has been taken, also cannot be accepted for the reason that it is neither the prayer of the land owner in the Writ Appeal nor submission of the land owner conceding vesting of the title and prayer of re-conveying is recorded in the order. The entire para 3 of the order is extracted hereunder:-



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" 3. The next contention is that Rule 3 (b) of the Tamil Nadu Land Acquisition Proceedings has not been complied with. The learned single Judge after perusing the files recorded the finding that remarks of the requisitioning body were also furnished to the petitioners along with the notice. In the circumstances, we do not find any ground to interfere with the order of the learned single Judge. Accordingly, writ appeal is dismissed. However it is made clear that we are not expressing any opinion about the petitioners' entitlement under Section 48-B of the Land Acquisition Act. No costs. Consequently, M.P.No.2/2007 is closed."

5.6. This apart, yet another circumstance which is pleaded by the learned Advocate General, is by relying upon a letter of the Housing Board to the government, claiming compensation from the government for allowing to use the land in respect of World Tamizh Conference, which would itself show the developmental activities carried on by the Housing Board. Further, pending the Writ Petition, a tender notice for developmental works, dated 03.06.2020, which was issued and the current revenue records which are mutated in the name of the Housing Board are also relied upon. The tender document and the revenue records were mutated after the filing of the Writ Petition. As far as the letter to the government is concerned, though it is an internal communication claiming



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compensation from the government, the same does not in any manner specifically indicate about the developmental works undertaken in the land claimed by the present Writ Petitioners. Thus, instead of simply coming up with a clear answer as to on what date and in which method the possession was taken, the State and the Housing Board are simply beating around the bush and are unable to satisfy that the first exception of taking possession exists in this case.

5.7. Regarding payment of compensation, admittedly, no amount has been paid. It is also not the case of the State that the amount was tendered and was refused by the land owners. The learned Advocate General pleaded that the amount has also been deposited in a treasury account and produced a *challan*, dated 01.03.2001 for depositing the award amount of Rs.38,83,496/- into one personal deposit account of the Special Tahsildar, Land Acquisition. In this regard, firstly, the procedure of depositing into personal deposit account itself has been discontinued by the government with effect from 22.03.1991 *vide* Government Letter No.10769,T1/89-2PWD. Secondly, the **Indore** judgment (cited *supra*) categorically lays down that payment would mean the actual modes of payment under the



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Repealed Act. It is specifically held that under the *Repealed Act*, there are three circumstances in Section 31, where, if the amount is tendered and is refused by the land owners or if the title of the person is doubtful or if there is any title dispute between rival claimants, the amount can be deposited into Court or otherwise in treasury if permissible. In this case, it is clear from the award itself that absolutely (i) there was no tender or refusal; (ii) there was no doubt as to the title; (iii) there was no rival claim or dispute regarding title; but, the award states that since there is a stay of dispossession, the amount is ordered to be deposited into the Civil Court under Sections 30 and 31 of the *Repealed Act*. Thus, it can be seen that there is absolutely no tender whatsoever. Therefore, there is neither payment nor tender and therefore the State / Housing Board has not made out any case for the second exception.

5.8. The learned Single Judge has dealt with both the exceptions in detail in the judgment under appeal and rejected the case of the State / Housing Board in para Nos.34 to 38 of the judgment, with which, we are completely in agreement with apart from the reasons stated *supra*. Thus, the appeal in W.A.No.183 of 2021 fails and is dismissed.



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F. W.A.Nos.357 of 2021 and 358 of 2021 against W.P.No.11535 and 1092 of 2020 :

6. These two appeals are filed by the land owners and arise out of the common judgment of the learned Single Judge, dated 15.09.2020. As stated in the para No.14 of the judgment under appeal, while the learned Single Judge found that the appellants / writ petitioners satisfied the twin conditions for invoking Section 24(2) of the *New Act* and after having found that the State / Housing Board have not established that possession was taken or compensation was paid, refused to grant relief and dismissed the Writ Petitions only because during the pendency of the proceedings the lands were sold and by the judgment of the Hon'ble Supreme Court of India in *Shivkumar and Anr. Vs. Union of India and Ors.*³, the illegal purchaser is not entitled for any relief and dismissed the Writ Petitions. While there can be no quarrel about the proposition that any purchaser, subsequent to the 4(1) notification, has no right at all, as held by the Hon'ble Supreme Court of India in *Shivkumar* (cited *supra*), factually the Writ Petitions are filed jointly by the original owners and subsequent purchasers. We are of

³ (2019) 10 SCC 229



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the view that the ratio in *Shivkumar* (cited *supra*), non-suiting the claimants, would not be applicable even in such case of joint claim made by both the original owners and the subsequent purchaser. As a matter of fact, the learned Single Judge himself takes notice of Section 16 of the *Repealed Act*, whereby, it is made clear that vesting of the land in the government itself takes place only upon taking possession and we have found that no possession has been taken in the instant case and not even a single rupee has been paid as compensation or deposited into Court or in any other independent interest bearing account till date of filing of the Writ Petition and therefore, non-suiting the Writ Petitioners only on the basis of the sale transaction, would amount to adding one more exception to Section 24(2) of the *New Act* which is not in the statute. To that extent, we are unable to agree with the learned Single Judge in non-suiting the Writ Petitioners in the above two Writ Petitions alone while granting relief to the other claimants. Therefore, the above W.A.Nos.357 and 358 of 2021 shall stand allowed.

G. W.A.186 of 2021 against W.P.No.10712 of 2020 :

7. One *K.Saraswati* and *K.Balan @ Vijayakumar* filed W.P.No.10712 of 2020 praying that the entire land acquisition proceedings in respect of



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S.F.No.6/2A in *Vellakinaru* village, *Coimbatore* district, covered in award No.2 of 1999, dated 31.12.1999 became lapsed by virtue of operation of Section 24(2) of the *New Act*. The said Writ Petition is allowed by the order of the learned Single Judge dated 15.09.2020, against which, the Executive Engineer and Administrative Officer of the Tamil Nadu Housing Board has filed the above appeal. Firstly, it can be seen that the award is of the year 1999 and therefore, it was clearly five years prior to the *New Act* coming into force. Secondly, it can be seen that the land is lying idle. It is not being put to use by the Housing Board by framing any scheme. No layout has been formed. No plot has been sold to any person. Not even a single rupee of compensation has been paid to the land owners or deposited in Court. Therefore, it cannot be said that the land acquisition proceedings are complete or over and the same is very much pending. Therefore, the writ petitioners satisfy the twin conditions to invoke section 24(2) of the *New Act*.

7.1. Now coming to the exceptions, the learned Advocate General relied upon Possession Certificate, dated 16.12.2006 which is verbatim the same as the one mentioned in the previous appeal dealt with supra, whereby,



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possession is handed over by the Assistant Grade Revenue Inspector, the office of the Land Acquisition Officer to the Surveyor in the Office of the Executive Engineer & Administrative Officer of the Housing Board and similarly, the tender documents and revenue records, which are mutated after the date of filing of the Writ Petitions, are again relied upon. Thus, in the absence of either physical possession or even a *panchanama* / memorandum of taking possession, we hold that the State / Housing Board has failed to establish the first exception. We have stated our detailed reasons in rejecting the very same contentions of the learned Advocate General in the connected appeal *supra*.

7.2. Now coming to the second exception, it is pleaded by the learned Advocate General by relying upon a communication, dated 01.06.2000 addressed to the learned Principal Subordinate Judge, *Coimbatore*, along with a copy of the counterfoil of the *challan* for deposit of the award amount of Rs.1,33,370/- to contend that the amount has been deposited in the Civil Court. In this case, the award itself clearly reads that the title of the Writ Petitioners, *K.Saraswati* and *K.Balan* is doubted by the Land Acquisition Officer and therefore, it is decided to deposit the amount into



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the Civil Court. Thus, it is clear from the award itself that there was no tender. Secondly, even though the document, in the form of a letter addressed to the learned Principal Subordinate Judge, *Coimbatore*, dated 01.06.2000 is produced, no proof for payment of the amount into Court is produced. As a matter of fact, we ourselves independently sought for the information from the concerned Court and by a communication in writing dated 17.12.2022, the learned Principal Subordinate Judge has clarified that no such amount was ever deposited into Court. Further, if the amount has been deposited, L.A.O.P number would have been given and notice would have been issued to the petitioners for them to file a claim petition. Admittedly, there are no such proceedings. As a matter of fact, the matter was specifically adjourned by this Court with instructions to the learned Advocate General to verify and produce any proof for the encashment of cheque / deposit of cheque into the Court account from the concerned account of the Land Acquisition Officer or treasury account which would be very much available for the respondents if the cheque No.973400 for Rs.1,33,370/- is filed by them into Court and encashed. Absolutely, no record was forthcoming. The only obvious conclusion which can be arrived at that pursuant to the award, the said letter was filed before the Court which



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would have been returned for some compliances and thereafter, absolutely no steps whatsoever have been taken by the respondent to deposit the sum into the Court. As a matter of fact, the learned Single Judge has dealt with this issue elaborately in para Nos.20 to 29 of his judgment and we agree with the reasonings of the learned Single Judge leading to the conclusion that there was no deposit at all before the court. Therefore, the challenge to the judgment of the learned Single Judge, dated 15.09.2020 fails and accordingly, W.A.No.186 of 2021 stands dismissed.

H. W.A.No.2498 of 2021 filed against W.P.No.10563 of 2013:

8. One *V.K.Rajasekaran* filed W.P.No.10563 of 2013 challenging the notification under Section 4(1) of the *Repealed Act*, dated 14.11.1996, declaration under Section 6, dated 23.12.1997 and award No.2 of 1999, dated 31.12.1999 in respect of his survey numbers in S.F.Nos.8/2A, 8/2C, and 9/2A at *Vellakinaru* village, *Coimbatore*. Even though pending the Writ Petition the prayer was amended by the petitioner, it was not specifically prayed for a declaration that the proceedings stand lapsed under Section 24(2) of the *New Act*, even though additional grounds have been specifically raised stating that physical possession of the land was not taken



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and the proceedings will have to be deemed to have lapsed under Section 24(2). However, the learned Single Judge, considering the identical handing over Possession Certificate dated 16.12.2005 and similar *challan* for deposit of amount before the Civil Court, held that possession has been taken and compensation has been deposited and proceedings therefore is concluded and the Writ Petition is in the nature of reviving concluded proceedings and dismissed the Writ Petition. The learned Single Judge also dismissed the Writ Petition on the ground that the relief prayed is for quashing of the Section 4(1) notification, Section 6 declaration and the award which is not maintainable well after the passing of the award.

8.1. There can be no two opinion about the finding of the learned Single Judge with respect of the original prayer of the writ petitioner / appellant to quash the land acquisition proceedings as the same are not belatedly maintainable after the passing of the award. But, however, even though not expressly made, the only prayer which is pressed by the writ petitioner by way of filing of the additional grounds is to declare the proceedings as lapsed by operation of Section 24(2) of the *New Act*.



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8.2. In this regard, the jurisdiction of this Court under Article 226 of the Constitution of India to issue a Writ of Declaration even if the writ of Certiorari is prayed is unquestionable. Therefore, the writ petitioner need not be non-suited on the technical plea of not praying for the exact relief. As held by us *supra*, the questions to be determined are whether the case of the petitioner satisfies the twin conditions to invoke Section 24(2) of the *New Act* and it is not within the ambit of the twin exemptions.

8.3. In this regard, it can be seen that the Award No.2 of 1999 is dated 31.12.1999 and therefore is before the period of 5 years from the date of commencement of the *New Act*. Secondly, in this case, there is no development in the land. It is not sold to any third party by the Housing Board. No layout has been formed in the instant land. The land is not put into any use and is lying idle from the year 1999. No amount of compensation is paid to the writ petitioner nor any L.A.O.P is pending regarding deposit of amount in Court. Therefore, it cannot be said that the proceedings are concluded and as such, once the proceedings are pending in respect of possession and use, in respect of payment of compensation, the case of the writ petitioner satisfies the second condition as to the pendency



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of the proceedings. It is in this context the **Indore** judgment lays down that Section 24(2) of the *New Act* can be invoked only in pending proceedings and concluded matters cannot be reopened. Land Acquisition proceedings are not complete merely on passing of award or failure of any challenge to the 4(1) notification or other orders in the earlier round of proceedings etc. Therefore, we are unable to agree with the learned Single Judge that the present case is an attempt to revive the concluded proceedings.

8.4. Next, it has to be considered whether any one of the two exceptions are present in the case so as to escape the lapse of acquisition as per Section 24(2) of the *New Act*. As regards taking of possession, verbatim the same handing over of Possession Certificate which is dated 16.12.2005 is again relied upon by the State / Housing Board in the present case also. For the reasons stated by us *supra* in the absence of any *panchnama* or memorandum or in the absence of any physical use of the property by the State / Housing Board, we hold that the respondents have not taken possession of the property.



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8.5. With reference to deposit of compensation, on a perusal of the award, it can be seen that even though the writ petitioner was present in the enquiry representing his father *Muthuswamy*, the Land Acquisition Officer simply records that for the absence of the writ petitioner's father *Muthuswamy* in the enquiry, he is unable to determine the ownership and therefore, the entire amount of compensation was directed to be deposited in the Civil Court under Section 30 and 31 of the *Repealed Act*. Thus, it is clear in this case that there was no tender of compensation. There is no finding about the doubt in the title with reference to the documents produced by the claimant and also the particulars gathered by the Land Acquisition Officer himself. Merely because the land owners deputed his son to participate in the enquiry, the same cannot be treated as a doubt in the title, enabling the Land Acquisition Officer to deposit the amount before the Court. The third condition of any rival claim also does not exist in this case. Therefore, in the first place, it should be seen that there was no occasion whatsoever for the Land Acquisition Officer to deposit the amount before the Court without tendering the same. In this regard, the essence of the *Indore* judgment (cited *supra*) is very categorical that if steps have been taken to deposit the money into Civil Court after tendering or in other



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justifiable cases in accordance with the Scheme of the *Repealed Act*, the same should be taken as satisfying the exception under Section 24(2) of the *New Act*. Therefore, the very pleading of the State / Housing Board about the deposit into the Civil Court is untenable. Again, with reference to the *challans* as already stated by us *supra*, by the communication of the learned Principal Subordinate Judge, *Coimbatore*, it is clear that no amount, as claimed in *challan* Nos. 817303 or 913399, was deposited pursuant to award No.2 of 1999. No such money is lying in the Court account nor any L.A.O.P number has been given which should have been done if the amounts are deposited. As stated by us *supra*, the learned Advocate General is unable to present any proof from the concerned bank account for deposit of such amount before the Principal Subordinate Court, *Coimbatore*. Thus, the second exception of payment of compensation is also not made out.

8.6. The object of Section 24(2) in the *New Act*, making the old land acquisition as lapsed in cases, where, merely after initiating the proceedings and passing the award, if the authorities are neither putting the land into any use by taking possession and accomplishing the public purpose for which



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the land was sought to be acquired nor paying the compensation to the original owners, entitled the owners to pray for the declaration and in any event, if the land in question is imminently necessary, the State authorities are not powerless to once again acquire the land under the *New Act*. Thus, the order of the learned Single Judge, dated 07.09.2021 in W.P.No.10563 of 2013 is unsustainable and is accordingly set aside and the W.A.No. 2498 of 2021 is allowed by declaring that the land acquisition proceedings in respect of the lands of the petitioner in S.F.No.8/2A, 8/2C, and 9/2A at *Vellakinaru Village, Coimbatore* covered by award No.2 of 1999, dated 31.12.1999 shall stand lapsed by operation of Section 24(2) of the *New Act*.

I. W.A.No.463 of 2022 filed against W.P.No.3640 of 2001:

9. One *Ravi Sam* filed W.P.No.3640 of 2001 praying to quash the notification under Section 4(1) of the *Repealed Act* dated 20.03.1991, Section 6 declaration dated 28.05.1992 and award No.2 of 1994, dated 23.05.1994 inasmuch as the lands of the petitioner in S.F.Nos.411/1 and 411/2 in *Vilankurichi Village, Coimbatore*. The learned Single Judge, by an order dated 28.10.2021, found that in the case on hand the petitioner has made out a case for applicability of Section 24(2) of the *New Act* as both the



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exceptions of taking physical possession and deposit before the Civil Court are not made out and hence the proceedings stood lapsed. This apart, also accepting the case of the petitioner that no notice was issued to him when his father was the owner of the land and when he passed away in the year 1961 itself and the very proceedings are liable to be quashed the learned Single Judge allowed the Writ Petition as prayed for. Aggrieved by the same, the Executive Engineer and Administrative Officer of the Tamil Nadu Housing Board has filed the present appeal.

9.1. At the outset, the contention of the learned Advocate General is that the prayer as such made in the writ petition to quash the 4(1) notification, 6(1) declaration and the award passed cannot be allowed belatedly in the writ petition filed much after the passing of the award of the year 1994, in W.P.No.3640 of 2001, merits acceptance. Further, if the petitioner wants to challenge the notifications and the award, he has to categorically make out a case that his father alone is the owner of the properties in S.F.Nos.411/1 and 411/2 which is disputed by the respondents.



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9.2. Be that as it may, still the other ground on which the learned Single Judge has allowed the Writ Petition is by operation of Section 24(2) of the *New Act*. Therefore, once again the question to be decided is that whether the petitioner has made out a case for declaring the land acquisition proceedings as lapsed by operation of Section 24(2) of the *New Act*.

9.3. Firstly, it can be seen that the Award No.2 of 94 is dated 23.05.1994 and as such, is well before the period of five years from the date, on which, the *New Act* came into force. Admittedly, in this case, the Housing Board has not sold the property to any third party, no layout has been formed, no developments have been made, no compensation has been paid to any of the disputed parties or deposited into Court. Therefore, it cannot be said that the matter has been complete and therefore, the issue was very much pending. There were also several litigations which were pending before this Court in the earlier rounds. Therefore, we hold that the twin conditions for invoking Section 24(2) of the *New Act* exist in this case.

9.4. Secondly, we have to consider whether any one of the twin exceptions are made out so as to save the land acquisition proceedings from



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the operation of Section 24(2) of the *New Act*. As far as taking physical possession is concerned, once again a similar handing over possession letter dated 09.12.1994 is the only material relied upon. For the detailed reasons stated by us *supra*, in the absence of any actual physical possession or taking possession by a *panchnama* or a memorandum from the landowner, the appellants have miserably failed to establish that they have taken physical possession.

9.5. Coming to the question of compensation, the appellants again rely upon a communication dated 08.07.1994 addressed to the learned Principal Subordinate Judge, *Coimbatore*, to contend that the award amount has been deposited into Court. As held by us *supra* it has been verified by us that no such amount was deposited into Court. No such amount is lying in Court deposit. No L.A.O.P has been numbered or pending. In spite of grant of time, the appellants are unable to produce any record to show that the amount has been debited from their treasury or other accounts and credited to the Court account. Even the endorsement of return made by the learned Principal Subordinate Judge, *Coimbatore* is there in the form produced by the Appellants. Though there is endorsement for



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representation, the only categorical conclusion which can be arrived at by the Court the papers were returned again and no steps whatsoever was taken by the State to deposit any amount before Court. In regard to the dispute of title raised by the learned Advocate General, the learned Single Judge has found that at least in respect of some of the revenue records, there is a confusion as to which *Narayanasamy* is the owner of the property. Even accepting the said contention to be a valid justification under Section 31 of the *Repealed Act* to deposit the same before the concerned Court, when the State Authorities have miserably failed to do so, they cannot raise the said objection for the purpose of deciding as to whether the land acquisition proceedings stood lapsed under Section 24(2) of the *New Act*. The dispute that whether the petitioner is the owner of the property or the legal heirs of some other *Narayanaswamy* are the owners of the property, will not in any way come to the aid of the appellants to contend that the land acquisition proceedings have not lapsed under Section 24(2) of the *New Act*. The rigor of Section 24(2) is that when in exercise of the power of eminent domain lands have been acquired, the same has to be put into use by taking possession and the owner has to be paid the compensation and if there is any dispute, the compensation has to be deposited in Court. In the absence



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thereof, by merely raising a question of title, the appellants cannot save the land acquisition from the mischief of Section 24(2) of the *New Act*.

9.6. Accordingly, we uphold the judgment of the learned Single Judge 28.10.2021 in W.P.No.3640 of 2001 inasmuch as it holds that the land acquisition proceedings stood lapsed in view of Section 24(2) of the *New Act*. In the result, Writ Appeal in W.A.No.463 of 2022 is partly allowed. The order of the learned Single Judge, dated 28.10.2021 passed in W.P.No.3640 of 2001 is modified by allowing the Writ Petition declaring that the land acquisition proceedings in respect of the lands claimed by the petitioner in S.F.Nos.411/1 and 411/2 in *Vilankurichi* village, *Coimbatore* covered by Award No.2 of 1994, dated 23.05.1994 stood lapsed by virtue of Section 24(2) of the *New Act*.

J. The Writ Petitions :

10. Apart from the above matters, the Writ Petitions, which were pending on the file of the learned Single Judge, were also posted before this Court as the claim of the said writ petitioners also arises out of the self-same awards, possession certificates, and compensation deposit *challans*. These



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writ petitions are squarely covered on all the four aspects of Section 24(2) of the *New Act* for the reasons stated *supra* and it suffices to list out the following details in the form of a tabular column :-

S. No.	W.P.No. and Petitioner Name	Award No., date and Survey No(s).	How is possession claimed?	How is compensation paid / deposited
1.	W.P.No. 31777 of 2017 – G. Chitra	Award No.1 of 1995 dated 18-04-1995 – S.F.Nos. 407/1 and 408	By handing over possession certificate dated 16-12-2005	<i>Vide challan</i> dated 31-05-1996 depositing the amount in personal deposit account.
2.	W.P. No. 10047 of 2021 – N.Indrani and Ors.	Award No.1 of 1995 dated 18-04-1995 – S.F. No. 409	By handing over possession certificate dated ~ (Not Available)	<i>Vide challan</i> dated 31-05-1996 depositing the amount in personal deposit account.
3.	W.P. No. 10054 of 2021 – A.Rajeshwari and Another	Award No.1 of 1995 dated 18-04-1995 – S.F. Nos. 409	By handing over possession certificate dated ~ (Not Available)	<i>Vide challan</i> dated 31-05-1996 depositing the amount in personal deposit account.
4.	W.P.No. 31776 of 2017 – G. Chitra	Award No.2 of 1994 dated 23-05-1994 – S.F. No. 410/1	By handing over possession certificate dated 09-12-1994 (the same is dealt with in WA No. 463 of 2022).	<i>Vide</i> letter dated 08-07-1994 addressed to Principal Sub Judge <i>Coimbatore</i> , which also contains the return endorsement (the same is dealt with in WA No. 463 of 2022).
5.	W.P. No. 12945 of 2021 – S.Ranthinam	Award No.2 of 1994 dated 23-05-1994 – S.F. No.	By handing over possession certificate dated 09-12-1994	<i>Vide</i> letter dated 08-07-1994 addressed to the Principal Sub Judge along with counter file of the <i>challan</i> and Form D –



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		412		Cheque No. 73102
6.	W.P. No. 7925 of 2021 – S.Sivasamy and Ors.	Award No. 2 of 1994 dated 23-05-1994 – S.F. Nos. 411/1 and 411/2	By handing over possession certificate dated 09-12-1994	Vide letter dated 08-07-1994 addressed to the Principal Sub Judge along with counter file of the <i>challan</i> and Form D – Cheque No. 73102
7.	W.P. No. 7928 of 2021 – Girija Janardhan and Another	Award No. 2 of 1994 dated 23-05-1994 – S.F. Nos. 411/1 and 411/2	By handing over possession certificate dated 09-12-1994	Vide letter dated 08-07-1994 addressed to the Principal Sub Judge along with counter file of the <i>challan</i> and Form D – Cheque No. 73102
8.	W.P. No. 7931 of 2021 – R. Srinivasan and Ors.	Award No. 2 of 1994 dated 23-05-1994 – S.F. Nos. 411/1 and 411/2	By handing over possession certificate dated 09-12-1994	Vide letter dated 08-07-1994 addressed to the Principal Sub Judge along with counter file of the <i>challan</i> and Form D – Cheque No. 73102
9.	W.P. No. 10036 of 2021 – R.Balachandran and Ors.	Award No. 2 of 1994 dated 23-05-1994 – S.F. No. 412	By handing over possession certificate dated 09-12-1994	Vide letter dated 08-07-1994 addressed to the Principal Sub Judge along with counter file of the <i>challan</i> and Form D – Cheque No. 73102

10.1. It can, thus, be seen that the Writ Petitions mentioned in S.Nos.1 to 3 above, relate to Award No.1 of 1995 and is dealt with *supra*, firstly, the award is five years prior to the date of commencement of the *New Act* and secondly, the proceedings are not over and therefore, Section 24(2) of the *New Act* has to be invoked. With regard to the two exceptions, when it was claimed by the State that possession of the land had been



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handed over by the Possession Certificate and that there was a deposit of the Award amount in the Sub Court, *Coimbatore*, we have given our findings that both these facts were not proved.

11. Similarly, the Writ Petitions mentioned in S.Nos.4 and 9 relate to Award No.2 of 1994 and is also dealt with *supra*, firstly, the award is five years prior to the date of commencement of the *New Act* and secondly, the proceedings are not over and therefore, Section 24(2) of the *New Act* has to be invoked. Regarding the two exceptions the self-same handing over Possession Certificates and also returned Court *challan* claiming to be the proof, were rejected by us for the reasons stated *supra*.

12. In view thereof, these Writ Petitions in W.P.Nos.31776 of 2017, 10047 of 2021, 10054 of 2021, 31777 of 2017, 12945 of 2021, 7925 of 2021, 7928 of 2021, 7931 of 2021, and 10036 of 2021 stand allowed as prayed for. However, there shall be no order as to costs in all these matters. Consequently, the connected miscellaneous petitions are closed.

(T.R., ACJ.)

(D.B.C., J.)

31.01.2023

Index : yes



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Speaking order

Neutral Citation : yes

grs

To

1. The Secretary to Government,
Housing and Urban Development Department,
Secretariat, Fort St. George,
Chennai - 600 009.
2. The Special Tahsildar (LA),
Housing Scheme No.3,
TATABAD, Sivanandha Colony,
Coimbatore - 641 012.
3. The Executive Engineer & Administrative Officer,
Coimbatore Housing Unit,
Tamil Nadu Housing Board,
TATABAD, Sivanandha Colony,
Coimbatore - 641 012.
4. The Superintending Engineer,
Tamil Nadu Housing Board,
Salem Region, Coimbatore - 641 002.
5. The Tahsildar,
Coimbatore North Taluk,
Coimbatore.



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**T.RAJA, ACJ.,
AND
D.BHARATHA CHAKRAVARTHY, J.,**

grs

W.A.Nos.357 of 2021 etc., (batch cases)

31.01.2023