



W.A.No.1628 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment reserved on:	Judgment delivered on:
22.12.2022	06.01.2023

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI
and

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

W.A.No.1628 of 2017

and

C.M.P.No.21233 of 2017

The Managing Director,
Tamil Nadu Housing Board,
493, Anna Salai,
Nandanam,
Chennai – 600 035.

.. Appellant

Vs.

- 1.Nachimuthu Gounder (deceased)
- 2.The State of Tamil Nadu,
Rep. by its Secretary to Government,
Housing and Urban Development Department,
Fort St. George,
Chennai – 600 009.
- 3.The Special Tahsildar – Land Acquisition,
Housing Scheme Unit – I,
Coimbatore.
- 4.Meenatchi
- 5.Mallika



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6.Jayanthi

.. Respondents

(Respondents 4 to 6 substituted as the Legal Representatives of the deceased 1st respondent vide order of this Court dated 27.04.2021 passed in C.M.P.No.18163 of 2018 in W.A.No.1628 of 2017)

Prayer: This Writ Appeal is filed under Clause 15 of Letters Patent, against the order dated 23.12.2014 made in W.P.No.2423 of 2011 passed by this Court.

For Appellant : Ms.C.Shyaamala
Standing Counsel for TNHB

For RR 2 & 3 : Mr.P.Gurunathan
Additional Government Pleader

For RR 4 to 6 : Mr.G.Sankaran

J U D G M E N T

(Judgment of the Court was delivered by V.M.VELUMANI,J.)

The appellant-Tamil Nadu Housing Board has filed the present appeal challenging the order of this Court dated 23.12.2014 made in W.P.No.2423 of 2011.

2.The 1st respondent herein filed W.P.No.2423 of 2011 challenging the Land Acquisition Proceedings to acquire his land in Survey No.536/2



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to an extent of 0.98.0 Hectares. The 2nd respondent issued Notification under Section 4(1) of the Land Acquisition Act, 1894, for acquiring the larger extent of land including the land of the 1st respondent for developing the neighbourhood scheme. The 3rd respondent was appointed as Land Acquisition Officer. According to 1st respondent, Section 4(1) Notification was issued on 06.09.1996 and Section 6 Declaration was notified only on 28.10.1997, beyond one year. His further case is no notice was issued to him at any point of time, he was not called for filing his objection and not called for enquiry. The award ought to have been passed on or before 27.10.1999. The award dated 29.10.1999 was passed beyond the period of one year, after lapse of time limit fixed in the Land Acquisition Act, 1894. The respondents 1 & 2 did not take possession from the 1st respondent and the 1st respondent is still in possession and is cultivating the land. The 1st respondent produced Patta, Adangal to show that he was cultivating the land. After coming into force the New Land Acquisition Act, 2013, the 1st respondent raised additional grounds that land acquisition proceedings initiated under the old Act lapsed as the respondents 1 & 2 failed to comply with conditions imposed. According to 1st respondent, he was in possession and the respondents 1 & 2 did not take possession and did not pay any compensation to him. His further



case is he was not aware of the land acquisition proceedings and he came to know about the said proceedings only on 11.01.2011, when the officials of the 2nd respondent visited the 1st respondent's land and only on verification, he came to know about the land acquisition proceedings. On the application filed under the Right to Information Act, 2005, the 2nd respondent informed the 1st respondent that there is no record in their Office to show that land was taken possession from the 1st respondent, details of compensation and handing over possession to the appellant. On these grounds, the 1st respondent prayed for allowing the Writ Petition.

2(a).The respondents 2 & 3 contended that the respondents followed the procedure for acquiring the land and award was passed as contemplated by the Land Acquisition Act, 1894 and compensation was paid to the 1st respondent through cheque. The possession was taken over from him and handed over the possession to the appellant.

3.The learned Judge considering the materials placed, by the order dated 23.12.2014, allowed the Writ Petition holding that land acquisition proceedings lapsed and discharged the land of the 1st respondent from land acquisition proceedings.



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4.Challenging the said order dated 23.12.2014 made in W.P.No.2423 of 2011, the appellant - Tamil Nadu Housing Board has come out with the present appeal.

5.Pending Writ Appeal, the 1st respondent died and his legal heirs were impleaded as respondents 4 to 6 as per the order of this Court dated 27.04.2021 made in C.M.P.No.18163 of 2018 in W.A.No.1628 of 2017.

6.The learned Standing Counsel appearing for the appellant submitted that the 3rd respondent followed the procedure and passed the award. The compensation was paid to the notified persons, possession was handed over to the appellant on 08.12.1999. In view of the above fact, Section 24(2) of the new Act is not applicable to the present case. The delay in initiating neighbourhood scheme will not give any right to the land owner.

6(a).The learned Standing Counsel appearing for the appellant further submitted that 1st respondent appeared for enquiry, physical possession was not taken, but compensation amount was paid to the 1st respondent. In support of her contentions, she relied on the Judgment of



the Hon'ble Apex Court reported in (2020) 8 SCC 129 (Indore Development Authority vs. Manoharlal and others);

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

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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 Act of 2013 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.”

6(b).The learned Standing Counsel appearing for the appellant relying on the above judgement, contended that even though physical possession was not taken from the 1st respondent, compensation was paid to him. He participated in the enquiry and received the compensation by way of cheque. In view of payment of compensation by the 3rd



respondent to 1st respondent, the condition contemplated in Section 24(2) of the Land Acquisition Act, 1894 had been complied with and produced the file containing challan to show the receipt by the 1st respondent and prayed for setting aside the impugned order and allowing the Writ Appeal.

7.The learned counsel appearing for the respondents 4 to 6, who are the legal heirs of the 1st respondent contended that the appeal is not maintainable and appellant has no *locus standi* to file appeal. The respondents 2 & 3 have admitted in the reply to the RTI application filed by the 1st respondent that there is no record to show that possession was taken from the 1st respondent, the same was handed over to the appellant and there is no record with regard to compensation paid to the 1st respondent. When the respondents 2 & 3 have admitted that there is no record to show that possession was taken from the 1st respondent, handed over to the appellant and compensation paid to the 1st respondent, the Writ Appeal is liable to be dismissed as not maintainable. The learned counsel appearing for the respondents 4 to 6 referred to the impugned order in the Writ Petition, wherein the respondents 2 & 3 have taken a specific stand that “possession has been taken over by Land Acquisition



Officer and in turn the property was handed over to Housing Board. The compensation amount had been deposited before the Civil Court. If the 1st respondent is in possession of the property, it would be an unlawful possession". Contrary to such a stand taken by respondents 2 & 3, the appellant has come out with a new case that the compensation was paid to Land Acquisition Officer by challan to be paid to the 1st respondent and the 1st respondent received the compensation amount. The learned counsel appearing for the respondents 4 to 6 further contended that this Court by the order dated 22.08.2022 directed the appellant to produce the files to prove the deposit before the competent Civil Court and/or to prove the receipt of compensation amount by the land owner. The appellant has not produced any document to show that either compensation was paid or deposited. The appellant also failed to file any statement for the said period and failed to prove that compensation amount was paid to the 1st respondent. Further, the learned Standing Counsel appearing for the appellant admitted that physical possession was not taken from the 1st respondent. In view of such admission and failure on the part of the appellant to prove the payment of compensation to the 1st respondent, the appellant has no *locus standi* to file Writ Appeal and the Writ Appeal is liable to be dismissed as not maintainable.



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7(a).The learned counsel appearing for the respondents 4 to 6 further contended that appropriate Government as per the Land Acquisition Act is in the present case is the State Government. The State Government which is an appropriate Government has not filed appeal challenging the impugned order dated 23.12.2014 made in W.P.No.2423 of 2011, whereby Land Acquisition proceedings was quashed. The requisitioning body can maintain the Writ Appeal only when physical possession was handed over to them. The learned Standing Counsel appearing for the appellant has admitted that possession was not taken from the 1st respondent and physical possession was not handed over to the appellant. When possession was not handed over, Writ Appeal by present appellant which is requisitioning body is not maintainable. The respondents 2 & 3 have not issued any award notice to the 1st respondent and has not tendered the compensation amount to the 1st respondent. The challan produced by the appellant is only an instruction to pay the compensation amount to the 1st respondent. The respondents 2 & 3 have not produced any document to show that either compensation amount was tendered or paid to the 1st respondent.



7(b).The learned counsel appearing for the respondents 4 to 6 further submitted that with regard to payment of compensation, statement of accounts was not produced. Section 12(2) Notice of the Land Acquisition Act, 1894 was not issued for payment of compensation. In support of his contentions, he relied on the following judgments:

(i) (2020) 8 SCC 129 (Indore Development Authority vs. Manoharlal and others);

“In re Issue 3: What is the meaning to be given to the word “paid” used in Section 24(2) and “deposited” used in the proviso to Section 24(2)

200. Connected with this issue are questions like what is the consequence of payment not being made under section 31(1) and what are the consequences of amount not deposited under section 31(2). The provision of section 24(2) when it provides that compensation has not been paid where award has been made 5 years or more prior to the commencement of the Act of 2013. In contradistinction to that, the proviso uses the expression "an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries". We have to find out when an



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amount is required to be deposited under the Act of 1894 and how the payment is made under the Act of 1894. The provisions of Section 31 of the Act of 1894 are attracted to the interpretation of provisions of section 24(2) to find out the meaning of the words 'paid' and 'deposited'. Section 31(1) makes it clear that on passing of award compensation has to be tendered to the beneficiaries and Collector shall pay it to them. The payment is provided only in section 31(1). The expression 'tender' and pay to them in section 31(1) cannot include the term 'deposited.'

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225. The land owners had argued that the obligation to pay gets discharged only when compensation is actually paid and/or deposited. Even if it is received under protest under Section 31(1), it is finally accepted by the landowners post-settlement by the Reference Court. We (1989) 1 SCC 760 150B.R. Enterprises v. State of U.P. and Ors., (1999) 9 SCC 700; Kailash Nath Agarwal and Ors. v. Pradeshia Industrial & Investment Corporation of U.P. Ltd. and Anr., (2003) 4 SCC 305 (which interpreted “proceeding” and “suit” differently; In DLF



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Qutab Enclave Complex Educational Charitable Trust v. State of Haryana and Ors., (2003) 5 SCC 622 (where “at his cost” and “at its cost” were interpreted to mean different situations. are not able to accept the submission as Section 34 of the Act of 1894, is clear even if the amount is not paid or deposited, it carries interest. The logic behind this is that if the State is retaining the amount with peace and its liability to pay does not cease, but it would be liable to make the payment with interest as envisaged therein. Once tender is made, obligation to pay is fulfilled so that the amount cannot be said to have been paid, but obligation to pay has been discharged and if a person who has not accepted it, cannot penalise the other party for default to pay and non-deposit carries only interest as money had been retained with the Government.

226. Thus, in our opinion, the word "paid" used in Section 24(2) does not include within its meaning the word “deposited”, which has been used in the proviso to Section 24(2). Section 31 of the Act of 1894, deals with the deposit as envisaged in Section 31(2) on being ‘prevented’ from making the payment even if the amount has



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been deposited in the treasury under the Rules framed under Section 55 or under the Standing Orders, that would carry the interest as envisaged under Section 34, but acquisition would not lapse on such deposit being made in the treasury. In case amount has been tendered and the landowner has refused to receive it, cannot be said that the liability arising from non-payment of the amount is that of lapse of acquisition. Interest would follow in such a case also due to non-deposit of the amount. Equally, when the landowner does not accept the amount, but seeks a reference for higher compensation, there can be no question of such individual stating that he was not paid the amount (he was determined to be entitled to by the collector). In such case, the landowner would be entitled to the compensation determined by the Reference court.

In re: Issue no.4: mode of taking possession under the Act of 1894

246. Section 16 of the Act of 1894 provided that possession of land may be taken by the State Government after passing of an award and thereupon land vest free from all encumbrances in the State Government. Similar are the provisions made in the case of urgency in Section 17(1). The



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word “possession” has been used in the Act of 1894, whereas in Section 24(2) of Act of 2013, the expression “physical possession” is used. It is submitted that drawing of panchnama for taking over the possession is not enough when the actual physical possession remained with the landowner and Section 24(2) requires actual physical possession to be taken, not the possession in any other form. When the State has acquired the land and award has been passed, land vests in the State Government free from all encumbrances. The act of vesting of the land in the State is with possession, any person retaining the possession, thereafter, has to be treated as trespasser and has no right to possess the land which vests in the State free from all encumbrances.

263. In Banda Development Authority (supra) this Court held that preparing a Panchnama is sufficient to take possession. This Court has laid down thus:

“37. The principles which can be culled out from the above noted judgments are:

- (i) No hard-and-fast rule can be laid down as to what act would constitute taking of possession of the acquired land.*
- (ii) If the acquired land is vacant, the*



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act of the State authority concerned to go to the spot and prepare a panchnama will ordinarily be treated as sufficient to constitute taking of possession.

(iii) If crop is standing on the acquired land or building/structure exists, mere going on the spot by the authority concerned will, by itself, be not sufficient for taking possession. Ordinarily, in such cases, the authority concerned will have to give notice to the occupier of the building/structure or the person who has cultivated the land and take possession in the presence of independent witnesses and get their signatures on the panchnama. Of course, refusal of the owner of the land or building/structure may not lead to an inference that the possession of the acquired land has not been taken.

(iv) If the acquisition is of a large tract of land, it may not be possible for the acquiring/designated authority to take physical possession of each and every parcel of the land and it will be sufficient that symbolic possession is taken by preparing appropriate document in the presence of independent witnesses and getting their signatures on such document.

(v) If beneficiary of the acquisition is an agency/instrumentality of the State and 80% of the total compensation is deposited in terms of Section 17(3-A) and substantial portion of the



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acquired land has been utilised in furtherance of the particular public purpose, then the court may reasonably presume that possession of the acquired land has been taken.”

279. The court is alive to the fact that are a large number of cases where, after acquisition land has been handed over to various corporations, local authorities, acquiring bodies, etc. After depositing compensation (for the acquisition) those bodies and authorities have been handed possession of lands. They, in turn, after development of such acquired lands have handed over properties; third party interests have intervened and now declaration is sought under the cover of section 24(2) to invalidate all such actions. As held by us, section 24 does not intend to cover such cases at all and such gross misuse of the provisions of law must stop. Title once vested, cannot be obliterated, without an express legal provision; in any case, even if the landowners' argument that after possession too, in case of non-payment of compensation, the acquisition would lapse, were for arguments' sake, be accepted, these third party owners would be deprived of their lands, lawfully acquired by them, without compensation of any sort. Thus, we have no hesitation to overrule the



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decisions in Velaxan Kumar (supra) and Narmada Bachao Andolan (supra), with regard to mode of taking possession. We hold that drawing of Panchnama of taking possession is the mode of taking possession in land acquisition cases, thereupon land vests in the State and any re-entry or retaining the possession thereafter is unlawful and does not inure for conferring benefits under section 24(2) of the Act of 2013.

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366.5. In case a person has been tendered the compensation as provided under Section 31(1) of the Act of 1894, 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). Land owners 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 Act of 2013.”



(ii)2006 (4) CTC 803, [Tamil Nadu Housing Board Vs.

Sembanna Gounder and Ors.]

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“2. We gave our careful consideration to the submissions made by Mr.N.R.Chandran, learned Senior Counsel for respondents 2 to 4 on the maintainability of the writ appeal and the submission made by Mr.K.Chelladurai in meeting those objections. Under the Land Acquisition Act "Appropriate Government" is defined under Section 3(ee) as hereunder:

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

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



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

(iii)W.A Nos. 582 and 583 of 2015, [Tamil Nadu Housing Board,Rep. by its Executive Engineer and Administrative Officer vs Pongianna Gounder (deceased) and Ors.]

“10.In support of the above submissions, the learned Senior Counsel relied upon the order of the Division Bench of this Court in the case of Tamil Nadu Housing Board vs. Sembanna Gounder and others reported in 2006 (4) CTC 803, wherein when a similar and identical issue came up for consideration as to whether the Housing Board has any interest since possession



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of the acquired land has not been handed over to them, the Division Bench of this Court has held that the Housing Board being requisition body has no interest, whatsoever, at any stage of proceedings initiated under the Land Acquisition Act in the land intended to be acquired till such time possession of such land is handed over to Housing Board and it is only the Government alone can challenge the order quashing the declaration made under Section 6 of the Act. The relevant paragraph of the said judgment is extracted below:

"2. We gave our careful consideration to the submissions made by Mr.N.R.Chandran, learned Senior Counsel for respondents 2 to 4 on the maintainability of the writ appeal and the submission made by Mr.K.Chelladurai in meeting those objections. Under the Land Acquisition Act "Appropriate Government" is defined under Section 3(ee) as hereunder:- "Appropriate Government" means, in relation to acquisition of land for the purposes of the Union, the Central Government, and, in relation to acquisition of land for any other purposes, the State Government. Under Section 4 of the Land Acquisition Act the "Appropriate Government" - as defined under Section 3(ee) of the Act alone can proceed to initiate the



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proceedings for acquiring the lands exercising their power of eminent domain. The Housing Board has no interest, what so ever, at any stage of the proceedings initiated under the Land Acquisition Act, in the land intended to be acquired till such time possession of the acquired land is handed over to the Housing Board. Since admittedly in this case the declaration under Section 6 of the Land Acquisition Act had come to be quashed at the instance of the land owners, we have no doubt at all that it is only the Government and the Government alone, being the appropriate Government under the Land Acquisition Act, can challenge the order of the learned Single Judge impugned in the writ petition. We are very clear in our mind that the Housing Board cannot challenge the order of the learned Single Judge, having regard to the stage at which the writ petition came to be allowed. Accordingly the objection regarding maintainability raised by learned Senior Counsel appearing for respondents 2 to 4 is sustained and the appeal stands dismissed as not being maintainable at the hands of the Tamil Nadu Housing Board. Since we have dismissed the writ appeal only on the maintainability issue, we are not expressing any opinion on the other points involved. No costs."

11. On a perusal of the above observations of the Division Bench, it would show that under Section



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4 of the Land Acquisition Act, the Appropriate Government as defined under Section 3(ee) of the Act alone can proceed to initiate the proceedings for acquiring the lands by exercising their power of eminent domain. However, the Housing Board was not given the physical possession of the land by the Government, inasmuch as the land acquisition proceedings have been quashed by the learned Single Judge.

*17. By virtue of the above provisions, since the physical possession of the lands in question have not been handed over to the appellant, we are bound by the ratio laid down in the case of **the Tamil Nadu Housing Board vs. Sembanna Gounder and others** (referred to supra) and also that no prior approval has been obtained from the Appropriate Government for the Housing Scheme as per Section 3(f)(vi) of the Act. Hence, we are of the view that the Tamil Nadu Housing Board has no locus standi to file these appeals. Therefore, the appeals are not maintainable and the same are liable to be dismissed.”*

(iv)W.A.Nos.1254 to 1258 of 2010, [Tamil Nadu Housing Board, rep. by his Executive Engineer & Administrative Officer, Vs. R.Shanmugam &Ors.]



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“8.It is his further case that when the Government had not filed an appeal, the appellant has no locus standi to maintain the appeal and prayed this Court to dismiss the appeal in limine.

9.Having considered the rival submissions, the following facts would clearly emerge:

(a) that the impugned order had been passed by the learned Judge based upon a letter dated 11.04.2008 issued by one V.K.Subramanian, Special Tahsildar (L.A.), Housing Scheme Unit, Tata bad, Coimbatore addressed to the learned Additional Government Pleader who had appeared before the learned Judge. In the said letter, he has categorically stated that the Award has not been passed in the land acquisition proceedings which were subject matter of W.P.Nos.8096 to 8100 of 2008. For better appreciation, the said letter is extracted hereunder:

<i>From</i>	<i>To</i>
<i>V.K.Subramanian</i>	<i>Thiru.V.Arun</i>
<i>Special Tahsildar (LA)</i>	<i>Addl.Govt.Pleader</i>
<i>Housing Scheme Unit,</i>	<i>High Court,</i>
<i>Tata bad,</i>	<i>Chennai-104.</i>
<i>Coimbatore.</i>	

Date:11.04.2008

Ref: (1) WP.Nos.8096 to 8100 of 2008

(2) Your telegram dated 04.04.2008

Sub: Land Acquisition – Coimbatore North Taluk, Coimbatore District, Survey Field No.286/1 etc – Writ Petitions filed by R.Shanmugam and others in WP Nos.8096 to 8100 of 2008 – instructions



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called for - submitted – regards

With reference to your telegram dated 04.04.2008 and upon perusal of the affidavit, I am submitting the following particulars:

Acquisition proceedings initiated in respect of the above said lands by issuing the notification under section 4(1) of the Act on 16.08.1982 in G.O.No.815 and the same was published in the Gazette on 01.09.1982 and the local publication made on 24.09.1982

On completion of 5-A enquiry, the Declaration under section 6 of the Act made on 23.08.1984 in G.O.No.665, which was published in Gazette on 01.09.1984 and the locality on 12.09.1984.

Pending acquisition proceedings, an amendment was effected in the L.A. Act on 24.09.1984. Section 11-A of the L.A. Act, was introduced fixing two years for passing award from the date of the amendment in respect of where the declaration was made before the date of the amendment (ie., 24.09.1984). Hence the time limit as per the amendment for passing an award was on or before 23.09.1986. In the meanwhile the other landowners had challenged the L.A. Proceedings of the above notifications in Writ Petitions in WP.Nos.6698 to 6704 of 1985 and stay was granted on 02.07.1985 and the said writ petitions were dismissed on 04.09.1985. After the dismissal of the above said writ petitions on 04.09.1985, the then Special Tahsildar (Land Acquisition), Housing Scheme Unit-II did not pass the award within the date.

Then the writ petition filed by the petitioners was dismissed on 29.07.1997. But the award was not passed even thereafter with regard to the above and said notifications.



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Special Tahsildar (LA)
Housing Scheme Unit,
Coimbatore

Recording the said submissions and the contents of the letter, the learned Judge had passed the impugned order.

b) If the facts placed by the appellant Housing Board are correct, then it is for the Government/official respondents to agitate the issue by filing appropriate application, however, the Government had not made any such effort. Further, the Housing Board, which is a beneficiary, has also not produced any communication urging the Government to initiate appropriate proceedings to get the impugned order before us being corrected. In the above context, we are of the view that the Housing Board being a beneficiary under the acquisition proceedings is not entitled to agitate the same by filing an appeal in view of the orders of the Division Bench in Tamil Nadu Housing Board vs. Sembanna Gounder and others reported in 2006 (4) CTC 803. For better appreciation, relevant portion thereof is extracted below:

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

Under Section 4 of the Land Acquisition Act the “Appropriate Government” - as defined under Section 3(ee) of the Act alone can proceed to initiate the proceedings for acquiring the lands exercising their power of eminent domain. The



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Housing Board has no interest, what so ever, at any stage of the proceedings initiated under the Land Acquisition Act, in the land intended to be acquired till such time possession of the acquired land is handed over to the Housing Board. Since admittedly in this case the declaration under Section 6 of the Land Acquisition Act had come to be quashed at the instance of the land owners, we have no doubt at all that it is only the Government and the Government alone, being the appropriate Government under the Land Acquisition Act, can challenge the order of the learned Single Judge impugned in the Writ Petition. We are very clear in our mind that the Housing Board cannot challenge the order of the learned Single Judge, having regard to the stage at which the Writ Petition came to be allowed. Accordingly the objection regarding maintainability raised by learned Senior Counsel appearing for respondents 2 to 4 is sustained and the Appeal stands dismissed as not being maintainable at the hands of the Tamil Nadu Housing Board. Since we have dismissed the Writ Appeal only on the maintainability issue, we are not expressing any opinion on the other points involved. No costs.”

10.In the aforesaid judgment, learned Judges of the Division Bench has categorically held that the Housing Board could not be termed as an aggrieved person as it will not be a person



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interested before possession handed over to them. In this case, even though it is claimed that the possession has been handed over to the appellant they have not produced any Panchanama before this Court to substantiate that possession has been taken from the land owners. The Hon'ble Apex Court in a Constitutional Bench Judgment of Indore Development Authority reported in 2020 (8) SCC 129 categorically held that the possession under the Land Acquisition Act can be drawn only by drawing a Panchanama and to prove that the possession has been taken such Panchanama is essential. We do not propose to traverse as to whether the Panchanama has been drawn to find out that the possession has been validly taken or the amount has been deposited into Court which has been disputed by the learned Senior Counsel appearing for the private respondents, because, when the acquisition proceedings have been held to be lapsed statutorily by not passing an Award within the prescribed period, then any proceedings subsequent to the same would be non-est and void ab initio. Hence, the alleged possession and deposit of the compensation amount would be of no consequences as they are all proceedings subsequent to the passing of the Award and hence we hold that the appellant Housing Board has no locus standi to maintain the appeal.”

(v)2012(1) SCC 792, [Raghubir Singh Sehrawat vs. State of Haryana and Ors.];

“23.The Respondents have not produced any other evidence to show that actual possession of the land, on which crop was standing, had been taken after giving notice to the Appellant or that



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he was present at the site when possession of the acquired land was delivered to the Senior Manager of HSIIDC. Indeed, it is not even the case of the Respondents that any independent witness was present at the time of taking possession of the acquired land.

24. The Land Acquisition Collector and his subordinates may claim credit of having acted swiftly inasmuch as immediately after pronouncement of the award, possession of the acquired land of village Jatheri is said to have taken from the landowners and handed over to the officer of HSIIDC but keeping in view the fact that crop was standing on the land, the exercise undertaken by the Respondents showing delivery of possession cannot but be treated as farce and inconsequential. We have no doubt that if the High Court had summoned the relevant records and scrutinized the same, it would not have summarily dismissed the writ petition on the premise that possession of the acquired land had been taken and the same vested in the State Government.

25. The legality of the mode and manner of taking possession of the acquired land has been



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considered in a number of cases. In Balwant Narayan Bhagde v. M.D. Bhagwat (1976) 1 SCC 700, Untwalia, J. referred to provisions of Order 21 Rules 35, 36, 95 and 96 of the Code of Civil Procedure and opined that delivery of symbolic possession should be construed as delivery of actual possession of the right, title and interest of the judgment-debtor. His Lordship further observed that if the property is land over which there is no building or structure, then delivery of possession over the judgment-debtor's property becomes complete and effective against him the moment the delivery is effected by going upon the land. The learned Judge went on to say:

"25. When a public notice is published at a convenient place or near the land to be taken stating that the Government intends to take possession of the land, then ordinarily and generally there should be no question of resisting or impeding the taking of possession. Delivery or giving of possession by the owner or the occupant of the land is not required. The Collector can enforce the surrender of the land to himself under Section 47 of the Act if impeded in taking possession. On publication of the notice under Section 9(1) claims to compensation for all interests in the land has to be



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made; be it the interest of the owner or of a person entitled to the occupation of the land. On the taking of possession of the land under Section 16 or 17(1) it vests absolutely in the Government free from all encumbrances. It is, therefore, clear that taking of possession within the meaning of Section 16 or 17(1) means taking of possession on the spot. It is neither a possession on paper nor a 'symbolical' possession as generally understood in civil law. But the question is what is the mode of taking possession' The Act is silent on the point. Unless possession is taken by the written agreement of the party concerned the mode of taking possession obviously would be for the authority to go upon the land and to do some act which would indicate that the authority has taken possession of the land. It may be in the form of a declaration by beat of drum or otherwise or by hanging a written declaration on the spot that the authority has taken possession of the land. The presence of the owner or the occupant of the land to effectuate the taking of possession is not necessary. No further notice beyond that under Section 9(1) of the Act is required. When possession has been taken, the owner or the occupant of the land is dispossessed. Once possession has been taken the land vests in the Government."



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29. In view of the above discussion, we hold that the record prepared by the revenue authorities showing delivery of possession of the acquired land to HSIIDC has no legal sanctity and the High Court committed serious error by dismissing the writ petition on the specious ground that possession of the acquired land had been taken and the same vested in the State Government in terms of Section 16.”

(vi)2020(2) CTC 670: Tamil Nadu Housing Board vs. S.

Doraisamy and Ors.

“19. That apart, a Division Bench of this Court in the decision reported in 2006 (4) CTC 83, Tamil Nadu Housing Board v. Subanna Gounder and others had held that Writ Appeal against the order of quashing Section 6 declaration is not maintainable at the instance of Requisitioning body, viz., Tamil Nadu Housing Board. Therefore, the present Writ Appeal preferred by the Tamil Nadu Housing Board is not maintainable and the Writ Appeal is to be dismissed. Hence, the Writ Appeal is dismissed confirming the order of the learned Single Judge quashing the land acquisition proceedings on the following grounds:-



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(a). Non-publication of Section 4(1) notification and Section 6 declaration in widely circulated newspaper

(b). On the question of maintainability of the Writ Appeal at the instance of TNHB which is the requisitioning body, when the Government has not filed any appeal.”

8.The learned Standing Counsel appearing for the appellant in reply referred to portion of the impugned judgment, where the arguments of the learned Additional Government Pleader appeared for respondents 2 & 3 has been recorded and submitted that Tahsildar by mistake has given wrong instructions and the same cannot be taken into consideration against the appellant. The learned Standing Counsel appearing for the appellant further contended that Section 24(2) of the Land Acquisition Act, 2013 would only come into operation in cases where the award under the Old Act had been passed five years or more prior to the commencement of the Act and either of two further conditions are satisfied namely, where the physical possession of the land has not been taken or the compensation has not been paid to the landowners. In the present case, the appellant has produced evidence to show that compensation was paid to the 1st respondent and complied with one of the conditions contemplated under Section 24 of The Land Acquisition



Act, 2013. The learned Judge erred in holding to the contrary and prayed for allowing the appeal.

9.The learned counsel appearing for the respondents 4 to 6 as a rejoinder to the reply of learned Standing Counsel appearing for the appellant submitted that the documents produced by the learned Standing Counsel appearing for the appellant to prove the payment of compensation is only a challan and no document is produced to show that compensation amount was tendered and paid to the 1st respondent. The appellant ought to have filed the statement of accounts as directed by this Court along with the affidavit and prayed for dismissal of the Writ Appeal.

10.Heard the learned Standing Counsel appearing for the appellant, learned Additional Government Pleader appearing for respondents 2 & 3 as well as the learned counsel appearing for the respondents 4 to 6 and perused the entire materials on record.

11.The appeal is filed by The Managing Director of the Tamil



Nadu Housing Board, Chennai. The Tamil Nadu Housing Board is the requisition body which sought acquisition of larger extent of land including the land belonging to the 1st respondent for developing a neighbourhood scheme. As per provisions of the Land Acquisition Act, 1894, the appropriate Government in the present case is the State Government. The State Government has appointed the 3rd respondent as Land Acquisition Officer to acquire the lands in question. The 1st respondent challenged the acquisition proceedings on the grounds that he was not aware of acquisition proceedings at all and no notice of proceedings was issued to him at any stage of the proceedings and that the compensation amount as per the alleged award was not paid to him. The present W.P.No.2423 of 2011 filed by the 1st respondent to quash the Section 4(1) Notification and Section 6 Declaration of the Land Acquisition Act, 1894 was allowed by a Single Judge of this Court by the order dated 23.12.2014. The 2nd respondent which is the appropriate Government and 3rd respondent, the Land Acquisition Officer have not filed any appeal challenging the said order. The appellant requisitioning body has come out with the present Writ Appeal. In the judgment reported in **2006 (4) CTC 803** and the judgments in W.A.Nos.582 & 583 of 2015 and W.A.Nos.1254 to 1258 of 2010 cited supra, it has been held



that only appropriate Government can file appeal challenging the order allowing the Writ Petition.

11(a).When the appropriate Government has not filed any appeal challenging the order allowing the Writ Petition, present appellant who is the requisitioning body has no authority to file appeal. It has been held that only when the land in question was taken possession from the land owners by the Authorities and handed over the same to the requisitioning body, the requisitioning body can file an appeal challenging the order quashing acquisition proceedings.

11(b).From the materials on record, especially from the impugned order it is seen that the respondents 2 & 3 have taken a specific stand that possession of the land in question was taken from the 1st respondent and handed over to the appellant. It is also specific case of the respondents 2 & 3 that compensation amount was paid to the 1st respondent. The respondents 2 & 3 did not produce any document to substantiate their case that possession was taken from the 1st respondent. On the other hand, 1st respondent to substantiate his case produced a reply sent under the Right to Information Act, 2005 from the 3rd respondent wherein, the



3rd respondent has admitted that there is no record to show that possession was taken from the 1st respondent, handed over to appellant and compensation was paid to the 1st respondent. The learned Judge considering the said documents, allowed the Writ Petition.

11(c).In the grounds of appeal, the appellant has stated that possession was taken from the 1st respondent by authorities and on 08.12.1999 possession was handed over to the appellant and also compensation was paid to the 1st respondent. In the typed set of papers, the appellant has filed a document termed as “Transfer Certificate” to show that land in question was handed over to the appellant on 08.12.1999. But in course of arguments, the learned Standing Counsel appearing for the appellant admitted that physical possession was not taken from the 1st respondent and not handed over to the appellant. Once it is admitted that possession was not taken from the 1st respondent and appellant is not in possession of the land in question as per the judgment reported in **2006 (4) CTC 803** and the judgments in W.A.Nos.582 & 583 of 2015 and W.A.Nos.1254 to 1258 of 2010 of this Court cited supra, the appellant has no *locus standi* to file the present appeal and appeal is liable to be dismissed as not maintainable.



11(d).We heard the learned Standing Counsel appearing for the appellant, learned Additional Government Pleader appearing for the respondents 2 & 3 and the learned counsel appearing for the respondents 4 to 6 extensively on merits of the case. Therefore, we proceed to decide the appeal on merits also.

12.From the materials on record, it is seen that it is the consistent case of 1st respondent that he was not aware of acquisition proceedings till 11.01.2011 when the officials of the 3rd respondent visited his land and informed him about the land acquisition proceedings. When the 1st respondent has taken a stand that no notice was sent to him calling upon his objection, he was not at all enquired in the proceedings, the 3rd respondent ought to have produced the file to show that notice was served on the 1st respondent calling for objection and also calling him for enquiry. The 3rd respondent has also not produced any material to show that notice was sent to 1st respondent in the award enquiry and the 1st respondent was informed about the award. Further, the 3rd respondent has not produced any material to show that compensation amount was paid to the 1st respondent. It is the case of the learned counsel appearing for the respondents 4 to 6 that as per Section 12 of the Land Acquisition Act,



1894, award has to be filed in the office of the Collector and notice of the said award must be given to all the interested persons. As per Section 12(2) of the Land Acquisition Act, 1894, if interested persons were not present either personally or through their representative, notice must be issued by Collector to all the interested persons. In the file produced by the learned Standing Counsel appearing for the appellant before this Court with regard to present acquisition proceedings, there is no document to show that 1st respondent was put on notice about acquisition proceedings or he was present, when the award was filed in the office of the Collector or notice was issued to the 1st respondent under Section 12(2) of the Land Acquisition Act, 1894. In the absence of any materials available in the file about complying with Section 12 of the Land Acquisition Act, 1894, we hold that no notice was served on the 1st respondent.

12(a).The 1st respondent has produced the information received from the 3rd respondent under the Right to Information Act, 2005 to show that no records are available in their office for taking possession from the 1st respondent, paying compensation to the 1st respondent and handing over possession to the appellant. The 3rd respondent has not denied the



information furnished by him to the 1st respondent. On the other hand, in the appeal, the appellant has filed a challan to show that compensation of Rs.1,76,655/- was paid to the 1st respondent and relied on the signature of the 1st respondent on the backside of the challan. We have carefully considered the challan produced by the learned Standing Counsel appearing for the appellant. The said challan does not mention any details of the cheque drawn in the name of the 1st respondent. The 3rd respondent or the appellant have not produced any document to show that any cheque was received and encashed by the 1st respondent by producing the documents and statement of accounts. The earlier Division Bench of this Court directed the learned Standing Counsel appearing for the appellant to produce the files to prove the deposit or receipt of compensation amount by 1st respondent. This order was issued by the Division Bench of this Court to find out whether the Land Acquisition Officer or appellant had paid compensation or issued any cheque for the compensation amount and that 1st respondent encashed the same.

12(b).The learned Standing Counsel appearing for the appellant has produced a letter dated 05.11.2022 addressed by the 3rd respondent to the Chief Manager, SBI, Treasury Branch, Coimbatore, requesting him to



furnish statement of accounts for the period from 01.11.1999 to 15.12.1999 to be produced in this Court. The learned Additional Government Pleader appearing for the respondents 2 & 3 and the learned Standing Counsel appearing for the appellant have not stated whether the 3rd respondent received statement for the said period or not and they have not given any reason for their failure to produce the files to prove the deposit or receipt of compensation amount by 1st respondent as ordered by this Court. The file produced by learned counsel appearing for the appellant does not contain any material to show that compensation amount was paid to 1st respondent and he had received the same. On the failure of the respondents 2 & 3 and the appellant, we draw adverse inference against the respondents 2 & 3 and appellant for not producing the files to show the compensation was paid to the 1st respondent. The payment of compensation is as per Section 31(1) of the Land Acquisition Act. The compensation amount must be tendered to the land owners and only if they fail to receive the same, the same can be deposited in the reference Court. In the present case, the respondents 2 & 3 have not produced any materials to show that compensation amount was tendered to the 1st respondent as per Section 31(1) of the Land Acquisition Act. It is pertinent to take note of the contradictory stands taken by the



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respondents 2 & 3 and appellant. Before the learned Judge, the respondents 2 & 3 have stated that compensation amount was deposited into Court. They have not produced any materials to substantiate the said stand. In the appeal, the appellant has taken a contradictory stand that compensation amount was paid to the 1st respondent. The appellant has failed to substantiate the said stand and we have dealt with the same supra. The 2nd document produced by the appellant is to show that possession of the land of the 1st respondent was handed over to the appellant. The 3rd respondent or the appellant have not produced any document to show that possession was taken from the 1st respondent.

12(c).On the other hand, the 1st respondent produced the document to show that he is still cultivating the land by producing Patta and Adangal. It is the case of the respondents 4 to 6 that they are in possession and even now are cultivating the land. From the judgments produced by the respondents 4 to 6, it is seen that when possession is taken by Land Acquisition Officer, it must be through Panchanama. The 3rd respondent or the appellant had not produced any document to show that possession was taken from the 1st respondent and compensation was paid to him. On the other hand, the learned Standing Counsel appearing



for the appellant had admitted that possession was not taken from the 1st respondent and possession was not handed over to the appellant. In spite of possession not being taken from the 1st respondent and handed over to the appellant, the appellant and 3rd respondent have created the documents termed as Transfer Certificate as though the land in question was handed over to the appellant. The appellant has fabricated a document with a view to somehow or other succeed in the appeal. The 3rd respondent, who is a Government servant and appellant, which is a statutory body has created the document and this Court deprecates such act of 3rd respondent and appellant.

12(d). From the judgments relied on by the learned counsel appearing for the respondents 4 to 6, it is seen that the respondents 2 & 3 are the appropriate Government and they have not disputed the case of the 1st respondent, respondents 4 to 6 that they are in possession of the land, no compensation was paid and no possession was taken from the 1st respondent. In view of the same, the appellant, who is only requisitioning body has no *locus standi* to file this appeal and hence, the appeal is not maintainable.



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13.For the above reasons, we hold that the respondents 2 & 3 or the appellant had not complied with any of the conditions contemplated under Section 24 of the Land Acquisition Act, 2013 and the appeal is liable to be dismissed on merits also and hereby dismissed. The order dated 23.12.2014 passed in W.P.No.2423 of 2011 stands confirmed. Consequently, the connected Miscellaneous Petition is closed. No costs.

(V.M.V., J) (R.H., J)
06.01.2023

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Index : Yes
Internet : Yes



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V.M.VELUMANI, J.
and

R.HEMALATHA, J.

kj / krk

To

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

2.The Special Tahsildar – Land Acquisition,
Housing Scheme Unit – I,
Coimbatore.

Pre-delivery Judgment
in W.A.No.1628 of 2017

06.01.2023