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W.A.No.2980 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 30.08.2023

Delivered on: 27.09.2023

....CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
AND

THE HONOURABLE MR.JUSTICE P.B.BALAJI

W.A.No.2980 of 2019

and

C.M.P. No.19249 of 2019

1. R. Ashok Kumar S/o. Late K.N. Ramakrishnan.
 2. Thirunavukkarasu S/o. Pandi
 3. Thangasamy (died) S/o. Late Malayandi
 4. Pandian (died) S/o. Late Periakaruppan
 5. Lakshmi W/o. Late Veeranan
 6. Pooncharam D/o. Late Veeranan
 7. Manimegalai D/o. Late Veeranan
 8. Gunasekarapandian S/o. Late Veeranan
 9. Sumathi D/o. Late Veeranan
 10. Nalina D/o. Late Veeranan
 11. Annadurai S/o. Late Veeranan
 12. Uma D/o. Late Veeranan
 13. S. Dhanalakshmi W/o. Late N. Sethu
 14. S. Suganthi D/o. Late N. Sethu
 15. S. Kala D/o. Late N. Sethu
 16. S. Chokanathan S/o. Late N. Sethu
 17. S. Rajarajan S/o. Late N. Sethu
 18. S. Baby Rani D/o. Late N. Sethu
 19. P. Rajeswari W/o. Late Pandian
 20. P. Subhalakshmi D/o. Late Pandian
 21. T. Nirmala W/o. Late Thangasamy
 22. T. Raja S/o. Late Thangasamy
 23. T. Karthickraja S/o. Late Thangasamy
- [A19&20, LR's of A4 (Late) Pandian, brought on record
vide order in C.M.A. No.859/2023 & A21 to A23,
LR's of A3 (Late) Thangasamy vide order in
C.M.A.No.856/2023 dated 19.01.2023]

.. Appellants

Vs.



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1. The State of Tamil Nadu
represented by its Commissioner and
Secretary to Government,
Social Welfare Department,
Fort St. George, Chennai-600 009.

2. The Special Tahsildar,
Land Acquisition (AWD),,
Unit-II,
Madurai - 625 020.

3. Uma Maheswaran S/o. Late Manga Thevar. .. Respondents

Prayer:- Appeal filed under Clause 15 of Letter Patent praying to set aside
the order passed by this Court in W.P.No.36628 of 2002 dated 07.06.2011.

For Appellants : Mr. S. Subbiah, Senior Counsel
for Mr. P. Raja.

For Respondents : Mr. U.M. Ravichandran, Special
Government Pleader assisted by
Mrs. R.L. Karthika, Government Advocate.

JUDGMENT

(Judgment of the Court was made by P.B.BALAJI,J.)

The unsuccessful Writ petitioners are the appellants before us.

2. The Writ petition was filed seeking issuance of a Writ of Certiorari
to quash the Section 4(1) notification under Land Acquisition Act as well
as the Section 6 declaration made pursuant there of.

3. The case of the appellants before the Writ Court is that they were



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the owners of the land, comprising of various Survey numbers in Onnukal Puliankuam Village, Melur Taluk. The said lands were sought to be acquired for the purpose of providing a scheme for the Adi-Dravidar persons, by providing house sites for Adi-Dravidars of the said locality. It is the specific case of the appellants that they were not aware of any land acquisition proceedings and no notice u/s.5-A of the Act was also served, providing an opportunity for them to putforth their valid objections. They have also claimed that since the acquisition was for providing house sites to Adi-Dravidars, proceedings under Act 31 of 1978 alone should have been initiated and therefore the proceedings initiated under the Central Act was invalid.

4. A counter affidavit was filed by the respondents before the Writ court stating that subsequent to the Section 4(1), Section 6 declaration was also made and an award was also passed. Thereafter, house site pattas were also issued to 38 poor houseless Adi Dravidars of Valachikulam Village. It is also the specific case of the respondents that the acquisition proceedings were completed wayback in the year 1987 and compensation was also paid to the appellants. It is also further stated that the possession



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of the lands was already taken over by the Government and to contend that the appellants had no notice of any proceedings is totally unbelievable and false. It is also stated that the land owners appeared for enquiry which was conducted on 07.10.1986 and all their objections were considered before being overruled. It is also further stated that notices u/s.9(3) and 10 of the Central Act fixing the date of award enquiry as 18.11.1987 were also served on interested persons and the compensation amount was paid as revenue deposit, as early as on 23.03.1988. According to the respondents, the statutory notices were issued to the land owners at every stage of the acquisition proceedings and allegations to the contra were totally denied.

5. We have heard Mr. S. Subbiah, Senior Counsel for Mr. P. Raja, for the appellants and Mr. U.M. Ravichandran, Special Government Pleader assisted by Mrs. R.L. Karthika, Government Advocate, for the respondents. We have also perused the records and the order of the Writ Court.

6. The Writ court primarily holding that there was no infirmity or illegality in initiating the proceedings under the Central Act, instead of



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invoking the provisions of Act 31 of 1978, dismissed the writ petition.

Aggrieved by the dismissal of the writ petition and challenging the same, the appellants have preferred the present writ appeal, raising the following grounds:

- (a) no Notice u/s.5(a) enquiry was served on the appellants;
- (b) No notice u/s.9 and 10 namely award enquiry was served on the appellants;
- (c) Even passing of the award was not put on notice of the appellants;
- (d) Proceedings under the Central Act were bad and without jurisdiction, in view of the special enactment viz., of the Tamil Nadu Acquisition of Land of Harijan Welfare Schemes Act 31 of 1978.
- (e) Proceedings are barred by limitation;
- (f) Section 6 declaration was made after one year from the date of Section 4(1) notification.

In short, the consistent case of the appellants before the Writ Court and also before us is that at no point of time, the appellants were served any notice under the Land Acquisition Act and therefore the



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acquisition proceedings are bad.

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7. At the outset, we would like to record the following relevant dates:-

1.	Section 4(1) Notification was issued on	02.06.1986
2.	Same was published on	16.06.1986
3.	5(a) enquiry was held on	07.10.1986
4.	Section (6) declaration was made on	12.08.1987
5.	Award was passed on	18.11.1987
6.	Award amount was deposited on the file of Pay and Accounts Officer, Madurai.	28.03.1988

8. Though the appellants have challenged the 4(1) notification as well as Section (6) declaration, they have not chosen to challenge the award that came to be passed subsequent to the Section (6) declaration. The Writ petition was filed only in 2002 and admittedly, award has not been challenged. Though Mr. S. Subbiah, Senior Counsel, for the appellants would vehemently contend that they had no occasion to know about the award having been passed and therefore only under such circumstances,



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they have not challenged the award, we are unable to accept the said contention for the simple reason that when it is the specific case of the appellants that they were not put on notice on any of the proceedings under the Act, proposing to acquire their lands and they have thought it fit to specifically challenge the Section 4(1) notification and also the Section 6 declaration alone. That being the admitted position, it is not possible to accept the arguments of the learned Senior Counsel for the appellants that for want of knowledge and factum of not being put on notice, the award was not challenged. If that argument is accepted, then there would not be no justification as to how the appellants were in a position to challenge the Section 4(1) notification and Section 6 declaration alone. However, it remains to be seen if the appellant can still succeed on the strength of the challenge made to the Section 4 Notification and Section 6 Declaration and whether if the appellants are able to make out a case on those grounds, it would not affect their not challenging the award.

9. In so far as the other ground regarding the proceeding namely Proceeding under the Central Act without having steps under the Act 31 of 1978, the issue is no longer res integra. The Hon'ble Supreme Court vide



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its judgment in *State of Tamil Nadu vs. Ananthi Ammal* reported in **1995(1) SCC 519** while upholding the vires of the Act 31 of 1978, held that *“all cases where proceedings under the Central Act initiated to acquire lands for the purpose of Harijan Welfare Schemes, vide provisions of Section 22 shall have no effect in cases where awards have already been made under the Central Act”*. Thus, when the said issue had already been answered by the Hon'ble Supreme Court, there is no merit in the contention of the learned Senior Counsel for the appellants that failure to proceed under Act 31 of 1978 was fatal.

10. The Writ court has also chosen to record the findings that the appellants have approached the Court belatedly and they have filed the Writ petition after a lapse of 6 years after the Section (6) Declaration was made and therefore on that ground also, the Writ petition came to be dismissed.

11. The learned Special Government Pleader would contend that the said lands have already vested with the State and the compensation amount was also deposited in the reveue deposit wayback on 28.03.1988. It is also



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seen from the status report filed by the respondents that the lands are lying vacant and the land owners have not allowed the beneficiaries to occupy the said lands. This statement made by the District Collection in her status report only confirms the claim of the appellants that appellants have been in continuous physical possession of the said lands.

12. Even in so far as the compensation amount is concerned, the respondents are unable to produce relevant records to show that the amount has been paid, when it is the definite case of the appellants that they have not been paid any compensation. In fact, it is stated that the relevant files are not traceable in any of the land acquisition unit offices.

13. We find force in two of the grounds canvassed by the Senior Counsel for the appellants. One is the delay in making the Section 6 Declaration ie., beyond one year from the date of Section 4(1) notification and the another is no notice having been issued to any of the appellants at any stage of the acquisition proceedings.



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14. In so far as the first issue is concerned, it is the specific case of the appellants in the affidavit in support of the Writ petition that they were never served with any notice of Section 5-A enquiry or Sections 9, 10, 11, 12 and Section 13. Unfortunately, the respondents in the counter have just made general averments that notices have been served on “interested persons”. There is no categorical assertion made by the respondents in the counter affidavit that notices have been served on the appellants at all relevant stages of the acquisition proceedings. The respondents are also unable to produce the records in this regard. Therefore we are constrained to accept the claim of the appellants that they have not put on notice on the acquisition proceedings at any stage.

15. In so far as the second limb of argument raised by the learned Senior Counsel, even from the counter affidavit filed before the Writ court as well as the status report filed by the District Collector, Madurai, it is seen that Section 4(1) notification vide G.O. Ms. No.1419 dated 02.06.1986 was published in the Tamil Nadu Gazette on 11.06.1986 and the publication in the local daily was also made. However, the dates on which, such publication of the Section 4(1) notification in local daily are



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not mentioned anywhere in the counter affidavit or in the status report.

Records are also not available to confirm whether such publication was duly made or not. Subsequently the Section (6) Declaration came to be made only on 12.08.1987 in G.O. Ms. No.1378, which is clearly after a lapse of one year from the date of Section 4(1) notification. Taking the date of publication as being on 11.06.1986, even then, the appellants are entitled to succeed.

16. At this stage, it is contended by the counsel for the respondents that the appellants have not chosen to challenge the award and therefore for such failure, on the part of the appellants, they cannot seek to quash the Section 4(1) notification and Section 6 Declaration alone and therefore on this ground, even though the respondents are unable to produce the necessary materials and records to establish their contention before this Court, the appellants cannot succeed in the Writ appeal.

17. One crucial aspect that deserves consideration in such matter is that a person is being deprived of his valuable right over property and the



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Act itself contemplates adequate compensation to be paid, in all such cases of acquisition. It is right position of law, in such matters of acquisition where a person's valuable right under Article 300A is sought to be taken-away, then the mandate set-out in various provisions of the enactment have to be strictly complied with. Here, admittedly the appellants have in no uncertain terms set-out their case before the Writ Court that they had no notice of any acquisition proceedings and that they are in possession and enjoyment of the subject lands. They have asserted specifically that they had no knowledge of the Section 4(1) notice and the declaration under Section 6 declaration and in any event, they were not put on notice of the enquiry under Section 5A of the Act or subsequently communications under Sections 9 and 10 of the Act. It is also their specific case that they have not received compensation at any point of time and the sum and substance of the case of the appellants was that the entire land acquisition proceedings were null and void. We have already discussed in detail and arrived at findings that the Section 4(1) notification and Section 6 declaration have to necessarily go for not being in compliance with the provisions of the Land Acquisition Act. Now, the only question that remains to be answered, is as to whether the failure of the appellants to



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challenge the award that was passed pursuant to Section 6 declaration would be fatal to their case. In this connection we place reliance on judgment of the Hon'ble Supreme Court in ***Competent Authority Vs. Barangore Jute Factory & Ors reported in (2005) 13 SCC 477***. The said case also arose under acquisition proceedings, though under the National Highways Act. The Hon'ble Supreme Court, rejecting the arguments of the Central Government that as the lands are already vested with the Competent Authority, there could be no challenge to the acquisition proceedings, held that when the initial notification was itself is bad, all steps taken in pursuance thereof will fall with it and that each step is a consequence of an earlier step, and in that sense all the steps are linked to the initial notification for acquisition. When the said initial notification is held to be not accordance with law then the foundation goes and rest of the edifice falls and invalid notification would render all subsequent steps invalid and the vesting of lands in the Central Government cannot be said to be lawful and it would not advance the case of the Competent Authority.

18. Applying the ratio of the above case to the facts of the present case, the fact that when the award has been subsequently passed in



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pursuance of the Section 4(1) notification and Section 6 declaration would by itself would not render challenge to the acquisition proceedings not maintainable, as the appellants have succeeded in invalidating the Section 4(1) as well as the Section 6 declaration and the award as a consequence would also go as held by the Hon'ble Supreme Court in the above referred judgment.

In fine, the Writ appeal stands allowed. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

(D.K.K.J) & (P.B.B.J)
27.09.2023

Internet : Yes
Index: Yes/No
Neutral Citation: Yes/No
mjs

To

1. The Secretary to Government,
State of Tamil Nadu
represented by its Commissioner and
Social Welfare Department,
Fort St. George, Chennai-600 009.

2. The Special Tahsildar,
Land Acquisition (AWD),,
Unit-II,
Madurai - 625 020.



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Pre-delivery judgment in
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