



Rev.Apl.writ(MD).Nos.37,38 & 56 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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JUDGMENT RESERVED ON : 16.06.2023

JUDGMENT PRONOUNDED ON : 23.06.2023

CORAM

THE HON'BLE MR. JUSTICE R.VIJAYAKUMAR

REV.APL.WRIT (MD)No.37, 38 & 56 of 2023

in

W.P(MD).Nos.21068 of 2016 and 8809 of 2021
and WMP(MD).No.5345 of 2023

REV.APL.WRIT (MD)No.37 of 2023

M.Abdul Kareem (died)

1.Thajuma Beevi

2.Asma Rani

3.Ainul

...Petitioners

Vs

1.The District Collector of Ramanathapuram
Collectorate Complex
Ramanathapuram District

2.The District Adi Dravidar and Welfare Officer
Ramanathapuram

3.The Special Tahsildar
Adi Dravidar Welfare
Ramanathapuram
Ramanathapuram District

.....Respondents



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REV.APL.WRIT (MD)No.38 of 2023

Tamilselvan

...Petitioner

Vs

1.The District Collector
Ramanathapuram District

2.The Thasildar
Paramakudi Taluk
Ramanathapuram District

3.The District Aadi Dravidar Welfare Officer
Ramanathapuram

4.The Special Thasildar
Aadi Dravidar Welfare Department
Ramanathapuram

.....Respondents

REV.APL.WRIT (MD)No.56 of 2023

Seenivarusai Bin M Zakaria
42, Jalan Flora, 1/10, Tamankpulai Flora
Johar Baru 81110
Malaysia
represented by his power of attorney
Tamilselvan

...Petitioner

Vs

1.The District Collector
Ramanathapuram District



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2.The Thasildar
Paramakudi Taluk
Ramanathapuram District

3.The District Aadi Dravidar Welfare Officer
Ramanathapuram

4.The Special Thasildar
Aadi Dravidar Welfare Department
Ramanathapuram

.....Respondents

Prayer in Rev.Apl.Writ(MD).No.37 of 2023 :- Review Petition filed under Order XLVII Rule 1 & 2 of CPC r/w. Section 114 of CPC, to review the order passed by this Court in WP(MD).No.21068 of 2016 dated 06.12.2022 and allow the writ petition.

Prayer in Rev.Apl.Writ(MD).No.38 of 2023 :- Review Petition filed under Order XLVII Rule 1 & 2 of CPC r/w. Section 114 of CPC, to review the order passed by this Court in WP(MD).No.8809 of 2021 dated 06.12.2022 and allow the writ petition.

Prayer in Rev.Apl.Writ(MD).No.56 of 2023 :- Review Petition filed under Order XLVII Rule 1 & 2 of CPC r/w. Section 114 of CPC, to review the order passed by this Court in WP(MD).No.8809 of 2021 dated 06.12.2022 and allow the writ petition.

(In all the petitions)

For Petitioners : Mr.T.S.R.Venkatramana
Senior Counsel
For Mr.RM.Arun Swaminathan

For Respondents : Mr.N.GA.Natraj
Government Advocate



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COMMON JUDGMENT

WEB COPY These review petitions have been filed seeking to review the order passed by this Court in W.P(MD).Nos.21068 of 2016 and 8809 of 2021.

2.Review Application Writ (MD).No.37 of 2023 has been filed by the writ petitioners in WP(MD).No.21068 of 2016. Review Application Writ (MD).No.38 of 2023 has been filed by the writ petitioner in WP(MD).No. 8809 of 2021. Review Application Writ (MD).No.56 of 2023 has been filed by a non-party to WP(MD).No.8809 of 2021 on the ground that he is the vendor of the writ petitioner in WP(MD).No.8809 of 2021.

Review Application Writ (MD).No.37 of 2023

3.WP(MD).No.21068 of 2016 has been filed challenging a 4(1) notification dated 26.09.1998 and an award passed by the third respondent in the writ petition on 01.02.1999 in respect of Survey Nos.424/1C and 424/1C situated in Karikuttam Village, Sarkaraikottai Group, Ramanathapuram Taluk and District. The said writ petition was dismissed by this Court on the ground that the same writ petitioner had filed WP(MD).No. 5288 of 2008 challenging the same award. However, the said writ petition was dismissed by this Court on 19.11.2009 which had attained



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finality. Therefore, this Court had dismissed the writ petition on the ground that the second writ petition is not maintainable.

4.The learned Senior Counsel who appeared for the review petitioners had contended that the order passed in WP(MD).No.5288 of 2008 is *per incuriam* and the same cannot be considered to be a binding precedent. The Writ Court in WP(MD).No.5288 of 2008 had relied upon a judgement of the Division Bench of our High Court reported ***in (2005) 3 CTC 1 (Ramalingam and others vs. The State of Tamil Nadu)*** and the judgement of the Hon'ble Supreme Court reported in ***(1996) 11 SCC 698 (Star Wire (India) Ltd., Vs. State of Haryana and others)*** and dismissed the said writ petition on the ground that any challenge to the acquisition proceedings after passing of the award is not maintainable. According to the learned Senior Counsel, those judgements arise out of Land Acquisition Act 1894. However, erroneously those judgements were cited as a precedent for a case arising out of Tamil Nadu Acquisition of Land for Harijan Welfare Scheme Act, 1978. Therefore, the said judgement in WP(MD).No.5288 of 2008 should be considered to be *per incuriam* and the writ petition namely WP(MD).No.21068 of 2016 should have been considered on merits.



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5.The learned Senior Counsel had cited the judgment of the Hon'ble Supreme Court in ***Civil Appeal Nos. 4083 and 4084 of 2016 (Satyendra Kumar & others Vs. Raj Nath Dubey & others)*** dated 06.05.2016 in which in Paragraph No.14, it is held as follows:

“14. However, as explained and held by this Court in the case of Mathura Prasad Sarjoo Jaiswal (supra), where the decision is on a pure question of law then a Court cannot be precluded from deciding such question of law differently. Such bar cannot be invoked either on principle of equity or estoppel. No equitable principle or estoppel can impede powers of the Court to determine an issue of law correctly in a subsequent suit which relates to another property founded upon a different cause of action though parties may be same. As explained earlier, in such a situation, the principle of res judicata is, strictly speaking, not applicable at all. So far as principle of estoppel is concerned, it operates against the party and not the Court and hence, nothing comes in the way of a competent Court in such a situation to decide a pure question of law differently if it is so warranted. The issues of facts once finally determined will however, stare at the parties and bind them on account of earlier judgements or for any other good reason where equitable principles of estoppel are attracted”.



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6.The learned Senior Counsel had further relied upon the judgment of the Hon'ble Supreme Court reported in **1970 1 SCC 613 (Mathura Prasad Bajoo Jaiswal and others Vs. Dossibai N.B.Jeejeebhoy)** in Paragraph No. 10 of the said judgement which is extracted as follows:

“10. It is true that in determining the application of the rule of res judicata the Court is not concerned with the correctness or otherwise of the earlier judgment. The matter in issue, if it is one purely of fact, decided-in the earlier proceeding by a competent court must in a subsequent litigation between the same parties be regarded as finally decided and cannot be, reopened. A mixed question of law and fact determined in the earlier proceeding between the same parties may not, for the same reason, be questioned in a subsequent proceeding between the same parties. But, where the decision is on a question law, i.e. the interpretation of a statute, it will be res judicata in a subsequent proceeding between the same parties where the cause of action is the same for the expression "the matter in issue" in S. 11 Code of Civil Procedure means the right litigated between the parties, i.e. the facts on which the right is claimed or denied and the law applicable to the determination of that issue. Where, however, the question is one purely of law and it relates to the jurisdiction of the Court or a decision of the Court sanctioning something which is illegal, by resort to the rule of res judicata a party affected by the decision will not be precluded from challenging the validity of that order under the rule of res judicata, for a rule of procedure cannot



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supersede the law of the land.”

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7.The learned Senior Counsel had further relied upon the judgement of the Allahbad High Court reported *in 1966 0 AIR (AII) 84 (Raj Narain Sasena Vs. Bhim Sen)* and the judgment of the Hon'ble Supreme Court reported *in 2011 2 SCC 705 (Rajendra Prasad Gupta Vs. Prakash Chandra Mishra)* to contend that the procedure is the hand made of justice.

8.In short, the contention of the learned Senior Counsel appearing for the review petitioners is that even though the present review petitioner was a party to the order in WP(MD).No.5288 of 2008, the said order would not be binding upon him and he cannot be non-suited for dismissal of the said writ petition since it is a judgement based on an erroneous decision. Hence, he prayed for allowing the review petition and to consider the writ petition on merits.

9.I have given anxious consideration to the submissions made by the learned counsel Senior Counsel appearing for the review petitioners and perused the records.

10.Admittedly, the present review petitioner had filed WP(MD).No. 5288 of 2008 challenging the award passed by the Special Thasildhar. In the



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said writ petition, he had contended that he was abroad and no notice was served either upon him or upon any member of the family. However, the said contention was rejected by the writ Court on the ground that after passing of the award, the writ petition is not maintainable and the same was dismissed on 19.11.2009. The said order has attained finality. The present writ petition was filed in the year 2016 originally with a prayer to quash the order of the District Adi Dravidar and Welfare Officer under which he had cancelled the order of assignment granted in favour of some beneficiaries and for a direction to initiate action to assign the lands to other beneficiaries. Thereafter, the prayer was amended challenging 4(1) notification dated 02.06.1998 and the award dated 28.01.1999 (signed on 01.02.1999).

11.The Hon'ble Supreme Court in a judgment reported in **(2010) 3 SCC 353 (N.Nagaraj Vs.B.R.Vasudeva Murthy)** in Paragraph No.60 has held as follows:

“60....The High Court has failed to appreciate that the principle of per incuriam has relevance to the doctrine of precedents but has no application to the doctrine of res judicata. To quote Rankin, C.J. of the Calcutta High Court in Tarini Charan Bhattacharjee v. kedar Nath Haldar.

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(1).The question of whether decision is correct or erroneous has no bearing upon the question whether it operates or does not operate as res judicata. The doctrine is that in certain circumstances the Court shall not try a suit or issue but shall deal with the matter on the footing that it is a matter no longer open to contest by reason of a previous decision. In these circumstances it must necessarily be wrong for a Court to try the suit or issue, come to its own conclusion thereon, consider whether the previous decision is right and give effect to it or not according as it conceives the previous decision to be right or wrong. To say, as a result of such disorderly procedure, that the previous decision was wrong and that it was wrong on a point of law, or on a pure point of law, and that therefore it may be disregarded, is an indefensible form of reasoning. For this purpose, it is not true that a point of law is always open to the party”.

12.The Hon'ble Supreme Court in a judgment reported in **2022 SCC Online SC 1460 (S.Ramachandra Rao Vs. S.Nagabhushana Rao and others)** in Paragraph No.31 has held as follows:

“31. For what has been noticed and discussed in the preceding paragraphs, it remains hardly a matter of doubt that the doctrine of res judicata is fundamental to every well regulated system of jurisprudence, for being founded on the consideration of public policy that a judicial decision must be accepted as correct and that no person should be vexed twice with the same kind of litigation. This doctrine of



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res judicata is attracted not only in separate subsequent proceedings but also at the subsequent stage of the same proceedings. Moreover, a binding decision cannot lightly be ignored and even an erroneous decision remains binding on a parties to the same litigation and concerning the same issue, if rendered by a Court of competent jurisdiction. Such a binding decision cannot be ignored even on the principle of per incuriam because that principle applies to the precedents and not to the doctrine of res judicata.”

13.In view of the judgement of the Hon'ble Supreme Court cited supra, it is clear that the present writ petitioner/review petitioner being a party in W.P(MD).No.5288 of 2008 cannot ignore the said judgement even on the principle of *per incuriam*. If such an interpretation is given, every unsuccessful party would attempt to portray the judgment /order as *per incuriam* and try to ignore the said judgment despite being party to the said proceedings.

14.As a result, the principle of *per incuriam* can never be invoked by a party to a decision without challenging the said decision in a manner known to law. However erroneous the said decision may be, it is binding upon the party to the said proceedings. The judgement cited by the learned Senior Counsel reported in **1970 1 SCC 613 (Mathura Prasad Bajoo**



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Jaiswal and others Vs. Dossibai N.B.Jeejeebhoy) clearly points out that even an erroneous decision operates as *res judicata* between the parties to the suit. In the present case, it is not the case of the parties that this Court lacks jurisdiction to pass such an order. The other judgements cited by the learned Senior Counsel are not applicable to the facts of the present case.

15.The non issuance of notice to the writ petitioner during the award proceedings was the ground on which W.P(MD).No.5288 of 2008 was filed. Even in the said writ petition, the notification under Section 4(1) which was issued on 26.09.1998 was not challenged. Therefore, the present attempt is only to reargue the writ petition without satisfying the ingredients of Order 47 Rule 1 of C.P.C.

16.Accordingly, this Review Petition lacks merits and the same is dismissed.

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17.Both these review petitions have been filed seeking to review the order passed by this Court in WP(MD).No.8809 of 2021. This writ petition was originally filed with a prayer to cancel the order of assignment granted in favour of some beneficiaries and directed the officials to assign the lands to different beneficiaries. However the prayer was amended and 4(1)

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notification dated 26.09.1998 and the award dated 01.02.1999 in respect of Survey 424/1D and 424/2D situated in Karikuttam Village, Sarkaraikkottai Group, Ramanathapuram Taluk and District were challenged.

18.This Court had dismissed the writ petition on the ground that one Tamilselvan who was the writ petitioner in WP(MD).No.8809 of 2021 had purchased the property on 22.07.2002 ie. after passing of the award. Therefore, he has no locustandi whatsoever to challenge the award. Challenging the said order, Review Aplc.Writ (MD).No.38 of 2023 has been filed by the writ petitioner. The Review Apl.Writ (MD).No.56 of 2023 has been filed by the vendor of the writ petitioner who was not a party to the writ petition.

19.The primary contention of the learned Senior Counsel is that the award passed in the said acquisition proceedings were set aside by this Court in WP(MD).No.3259 of 2010 on 17.06.2014. When the same award has been quashed with regard to some other land owners, the said order will enure to the benefit of the adjacent land owners also. The notification or declaration were not reflected in the encumbrance certificate while he had purchased the property. The land continues to be a vacant site and therefore,



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it has not been put to use for public purpose for which it was said to have been acquired.

20.The learned Senior Counsel had further contended that the pendency of acquisition is not a bar for purchasing the property but his purchase is only subject to the out come of the said proceedings. He attempted to rely upon Section 52 of the Transfer of Property Act, 1882 and the Hon'ble Supreme Court Judgements that were delivered touching upon Section 52 of the Transfer of Property Act. According to the learned Senior Counsel, the order in WP(MD).No.3259 of 2010 was not brought to the notice of the Court when the writ petition was argued. That apart, now a review petition has been filed by the vendor of the writ petitioner in WP(MD).No.8809 of 2021 and therefore, the locus of writ petitioner pales into insignificance. Hence, he prayed for allowing both the review petitions.

21.Per contra, the learned Government Advocate appearing for the official respondents had contended that the order passed in WP(MD).No. 3259 of 2010 does not relate to the survey number for which the present writ petition has been filed. The award proceedings were quashed in respect of some other land owners and therefore, the said order cannot be cited as a precedent. He had further contended that the acquisition proceedings were



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known to the purchaser and only because of the said fact, he has not approached the revenue authorities so far for issuance of patta. Hence, he prayed for dismissal of the review petitions.

22.This Court has carefully considered the submissions made on either side and perused the records.

23.WP(MD).No.8809 of 2021 was filed by the purchaser namely Tamilselvan who is said to have purchased the property under a registered sale deed dated 22.07.2002 from Seenivarusai Bin M Zakaria who is the petitioner in Review Apl.Writ(MD).No.56 of 2023. Admittedly, 4(1) notification has been issued on 26.09.1998 and the award has been passed on 28.01.1999.

24.The Hon'ble Supreme Court in a judgement reported in **(2019) 10 SCC 229 (Shiv Kumar and another Vs. Union of India and others)** in Paragraph No.8 has held as follows:

“8. It has been laid down that the purchasers on any ground whatsoever cannot question proceedings for taking possession. A purchaser after Section 4 notification does not acquire any right in the land as the sale is ab initio void and has no right to claim land under the policy.”



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28.As far as the Review Application Writ (MD).No.56 of 2023 is concerned, it has been filed by the original land owner who had sold the property after award to the petitioner in Review Application (MD).No.38 of 2023. According to the review petitioner, he was abroad and he was not aware of the acquisition proceedings and he was not served any notice or communication. Moreover, the acquisition was not reflected in the encumbrance certificate and therefore, the sale deed was registered in favour of the review petitioner in Review Application Writ(MD).No.38 of 2023. The acquisition proceedings have been set aside by the High Court in WP(MD).No.3259 of 2010 which will enure to the other landowners also. The acquisition proceedings are not reflected in the revenue records and therefore, he seeks to review the order made in WP(MD).No.8809 of 2021.

29.The learned Senior Counsel appearing for the review petitioners had contended that the original owner was abroad and there was a complete statutory violation in issuance of notification and passing of award which has taken away not only his statutory right but also his constitutional rights to the property. Hence, the same can be challenged at any point of time from the date of knowledge.



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30.Per contra, the learned Government Advocate had contended that the land owner cannot challenge the acquisition proceedings after passing of the award and especially after lapse of so many years. Hence, this review petition is not maintainable due to delay and laches.

31.I have considered the submissions made on either side and perused the records.

32.It is an admitted fact that 4(1) notification has been issued on 26.09.1998 and an award has been passed on 28.01.1999 (signed on 01.02.1999). From the year 1999 till filing of this review petition in the year 2023, for the past 24 years, the land owner has not taken any steps to challenge the award in a manner known to law. A perusal of the grounds of review petition does not disclose when the review petitioner had returned to India. In fact, he has executed a sale deed in the year 2002 which would indicate that he was in India in the year 2002. As rightly contended by the learned Government Advocate, the review application seeking to challenge the acquisition proceedings is clearly hit by delay and laches.

33. The Hon'ble Supreme Court in a judgment reported in **(2012) 12 SCC 133 (V.Chandrasekaran and another Vs. Administrative Officer and others)** in Paragraph No.24 has held as follows:



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“24. Therefore, the law on the issue can be summarised to state that, in the event that the person interested has not filed objections in response to a notice issued under Section 5-A, and has not challenged the acquisition proceedings, the quashing of the declaration issued under Section 6 in some other case, would not enure any benefit to such person. More so, where the possession of land has already been taken, and such land stands vested in the State, free from all encumbrances as provided under Sections 16 and 17(2) of the Act, prior to the date of decision of the Court quashing the declaration in toto, no benefit can be taken by him. Where a party has not filed objections to the notice issued under Section 5-A, the declaration qua such persons is generally neither quashed, nor does it stand vitiated qua him, by any error of law warranting interference.....”

34. The Hon'ble Supreme Court in a judgment reported in **(1997) 5 SCC 421 (Abhey Ram (dead) & others Vs. Union of India and others)** in Paragraph No.11 has held as follows:

*“11. It is seen that before the Division Bench judgment was rendered, the petition of the appellants stood dismissed and the appellants had filed the special leave petition in this Court. If it were a case entirely relating to **Section 6** declaration as has been quashed by the High Court, necessarily that would enure the benefit to others*



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also, though they did not file any petition, except to those whose lands were taken possession of and were vested in the State under [Section 16](#) and [17\(2\)](#) of the Act free from all encumbrances. But it is seen that the Division Bench confined the controversy to the quashing of the declaration under [Section 6](#) in respect of the persons qua the writ petitioners before the Division Bench. Therefore, the benefit of the quashing of the declaration under [Section 6](#) by the Division Bench does not enure to the appellants.

35.The Hon'ble Supreme Court in a judgment reported in **(2015) 8 SCC 723 (Chairman and Managing Director, Tamil Nadu Housing Board and another Vs. S.Saraswathy and others)** in Paragraph Nos.11 and 12 has held as follows:

“11. We are respectfully in accord with the observations of Coordinate Benches that unless the Declaration under [Section 6](#) or the Notification under [Section 4](#) of the Act is not explicitly quashed in toto or in its wholeness by the Court, the benefits of relief granted by the Court would be effective only qua the parties before it.....

12. It has been repeatedly reiterated by this Court that those who have missed the boat in challenging the acquisition proceedings, who sat idle and have let the grass grow under their feet cannot, thereafter, be permitted to jump on the bandwagon of others who



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entered the portals of the Court at the appropriate time and thereafter obtained favourable orders.....”

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36.A perusal of the Judgments of the Hon'ble Supreme Court cited supra, will clearly indicate that unless quashing of the notification or award explicitly quashes the same in toto or its wholeness, the benefit of relief would not endure to the benefit of the non-parties. It could be further seen that fence sitters cannot be permitted to wait and file a writ petition after knowing the result of the writ petition filed by the adjacent owner.

37. A perusal of the order of this Court in WP(MD).No.3259 of 2010 clearly indicates that it relates to Survey Nos.424/1A, 424/2A, 424/1B and 424/2B. However, the present writ petition in WP(MD).No.8809 of 2021 relates to Survey Nos. 424/1D and 424/2D. Therefore, it is clear that these survey numbers were not the subject matter of the writ petition in WP(MD).No.3259 of 2010.

38.The review petitioner having slept over for more than 25 years, has now approached this Court by filing a review application after the writ petition was dismissed, only to strengthen the hands of his purchaser. The grounds of review does not disclose whether he has retained any portion of



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the land acquired by the Government. It seems that he had sold the entire property to Tamilselvan. Therefore, viewed from different angle also, he has no locustandi whatsoever to challenge the acquisition proceedings by filing this review application. Therefore, Review Application Writ (MD).No.56 of 2023 lacks merits and the same stands dismissed.

39.Accordingly, Review Application Writ (MD).Nos. 37, 38 and 56 of 2023 stand dismissed. No costs. Consequently, connected miscellaneous petition is closed.

23.06.2023

Index: Yes/No
Internet: Yes/No
NCC : Yes/No
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To
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R.VIJAYAKUMAR, J.

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Pre-Delivery Common Judgment made in
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