



Review Application Nos.220 & 221 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.10.2024

CORAM

THE HON'BLE Mr. JUSTICE S.S.SUNDAR

AND

THE HON'BLE Dr. JUSTICE A.D.MARIA CLETE

Review Application Nos.220 & 221 of 2011

1.Mary Jacob

2.Susan Jacob

Rep. by their duly constituted agent

K.Jacob John

.. Petitioners in both cases

Vs.

1.The Government of Tamil Nadu
by its Secretary and Commissioner
Housing and Urban Development
Fort St. George
Chennai 600 009

2.The Special Tahsildar
Land Acquisition Schemes for
Tamil Nadu State Housing Board
Nandanam
Chennai 600 035

3.The Special Tahsildar
Mylapore-Triplicane Taluk
Chennai 600 028

.. Respondents in both cases



Review Application Nos.220 & 221 of 2011

Review applications filed under Order XLVII Rule 1 read with Section 114 CPC praying to review the common order dated 23.08.2011 passed in W.A.Nos.2011 & 2012 of 2010.

For Petitioners : Mr.A.L.Somayaji
in both cases Assisted by Mr.M.Vijayamehanath
For RR1 and 3 : Mr.A.Selvendran
in both cases Special Government Pleader
For R2 : Mr.D.R.Arun Kumar
Standing Counsel

COMMON ORDER

(Made by S.S.SUNDAR, J.)

These two review applications are filed challenging the common order dated 23.08.2011 passed in W.A.Nos.2011 & 2012 of 2010.

2. The brief facts that are necessary for disposal of the review applications are as follows :

2.1. The petitioners are the original owners of the property by virtue of the two settlement deeds executed by their mother in the year 1972. There is no issue that the entire extent of 1 acre in survey No.84/6A in Thiruvanmiyur village originally belonged to the mother of the review petitioners viz., Sarah



John. The said land was sought to be acquired by the Government under Section 4(1) of the Land Acquisition Act *vide* G.O.Ms.No.1096, Housing and Urban Development, dated 17.07.1978, for state housing development scheme.

2.2. Following the notification under Section 4(1) of the Land Acquisition Act, a declaration came to be issued *vide* G.O.Ms.No.667, Housing and Urban Development, dated 06.08.1981. The petitioners filed a writ petition in W.P.No.13211 of 1986 challenging the acquisition proceedings *vide* notification issued under Sections 4(1) and 6 of the Land Acquisition Act. The writ petition filed by the petitioners were disposed of along with batch of cases by quashing the acquisition proceedings, by order dated 24.10.1991.

2.3. The said order of the learned Single Judge quashing the acquisition proceedings in respect of the petitioners land has become final and there was no challenge to this order dated 24.10.1991. After the quashment of acquisition proceedings, the petitioners applied for patta before the revenue officials. It appears that the revenue officials directed the petitioners to get NOC from the State Housing Board as the land had been registered in the name of the State Housing Board following the acquisition proceedings. Therefore, the petitioners filed a writ petition in W.P.No.11504 of 2006 for issuance of a writ of



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mandamus to grant patta and another writ petition in W.P.No.43770 of 2006 for a direction to the State Housing Board to issue NOC by referring to the order of this Court quashing the acquisition proceedings in the writ petition filed by them.

2.4. It is admitted that in the meanwhile, an award has also been passed on 10.09.1986, fixing compensation for the land and it is admitted that no amount was disbursed to the petitioners. However, the petitioners received an intimation on 30.09.1986 stating that compensation has been deposited in Court. Therefore, when the writ petition filed by the petitioners was allowed by this Court, the respondents are aware that award had been passed, though possession had not been taken in view of the pendency of the acquisition proceedings.

2.5. The writ petitions filed by the petitioners in W.P.Nos.11504 of 2006 and W.P.No.43770 of 2006 are dismissed by the learned Single Judge, by order dated 25.08.2010, wherein, it is held as under :

“12. The earlier writ petition filed by the petitioners in W.P.No.13211 of 1986 was challenging notification issued under Section 4(1) and declaration made under Section 6 alone. Once the award is passed in land acquisition proceedings, the award has to be challenged by the erstwhile owners if mandatory procedures have not been followed without which no writ petition is maintainable. The said issue was already considered and settled by the Supreme Court in the decision



reported in (1997) 2 SCC 627 (*C. Padma and others. Deputy Secretary to the Government of Tamil Nadu and Others*); AIR 2000 SC 671 (*Municipal Council, Ahmednagar v. Shah Hyder Beig*); (2003) 4 SCC 485 (*Tej Kaur v. State of Punjab*); and Division Bench decision reported in 2005(3) CTC 691 (*Harshavardhan v. State of Tamil Nadu*). In the Division Bench decision of this Court reported in 2005(3) CTC 691 (*cited supra*) in para 3 it is held as follows:

"3. It has been repeatedly held by the Supreme Court in *Tej Kaur v.State of Punjab*, 2003 (4) SCC 485, that writ petition challenging the land acquisition proceedings should not be entertained after the award has been passed. In that case, the award was passed on 15.3.1994 whereas the writ petition was filed on 12.4.1994, i.e. after the award was given. Hence the writ petition was dismissed as belated. Similarly in *Municipal Council, Ahmednagar v.Shah Hyder Beig*, AIR 2000 SC 671, the Supreme Court observed vide paragraph 17:

"In any event, after the award is passed, no writ petition can be filed challenging the acquisition notice or against any proceedings thereunder.

The Supreme Court also observed in that decision that this has been the consistent view of the Court e.g., in *C.Padma and others v. Deputy Secretary to the Government of Tamil Nady and Others*, 1997 (2) SCC 527; *Municipal Corporation of Greater Bombay v. The Industrial Development Co. Ltd.*, AIR 1997 SC 482, etc. Hence, without going into e merits of the case, we are of the opinion that the writ petition was rightly missed on the ground of laches. The writ appeals are, therefore, dismissed".
(Emphasis Supplied)

Applying the said decisions to the petitioners' case the writ petition filed by the Lioners in W.P.No.13211 of 1986 without Challenging the Award No.4 of 1986 dt.23.9.1986 is not maintainable."

The learned Single Judge dismissed the writ petitions mainly on the ground that the earlier writ petition, filed without challenging the award passed on



23.09.1986 is not maintainable, ignoring the legal position that a final order in a writ petition which has become final cannot be rendered invalid in subsequent proceedings on the ground that the order is erroneous. Even a review is impermissible on the ground that the previous order is erroneous.

2.6. Surprisingly, the learned Single Judge erroneously examined what the legality of the order in the earlier writ petition filed by the petitioners in W.P.No.13211 of 1986 in a collateral proceedings. Following the judgments of the Supreme Court in *Shenoy & Co. Vs. CTO [(1985) 2 SCC 512]* and *U.P.Pollution Control Board and others Vs. Kanoria Industrial Ltd. and another [(2001)2 SCC 549]*, the learned Single Judge held that the petitioners have no right to contend that the notification issued under Section 4(1) and the declaration made under Section 6 of the Land Acquisition Act, having been set aside by this Court on the ground of vagueness, they are the owners of the land and they are entitled to get patta and NOC from the Tamil Nadu Housing Board.

2.7. The learned Single Judge, accepting the argument of the learned Additional Advocate General that the Housing Board having been given possession as early as on 30.10.1986, held that the petitioners have no *locus standi* to demand patta and NOC for the land which had already vested



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with the Housing Board. The learned Single Judge observed that the land vested with Housing Board cannot be divested and hence, reconveyance is not possible, as per the decision of the Supreme Court in the case of *Tamil Nadu Housing Board Vs. V.L.Chandrasekaran [(2010)2 SCC 786]*, wherein the Supreme Court was dealing with a case which is entirely different.

2.8. It is pertinent to mention that the learned Single Judge dismissed the writ petitions. This order of the learned Single Judge was confirmed by the Division Bench, when the petitioners filed W.A.Nos.2011 and 2012 of 2010. The Division Bench taking note of the fact that the award is not challenged in the earlier writ petition, observed that the award has become final. The Division Bench also held that once award had been passed, a notification under Section 4(1) and declaration under Section 6 of the Land Acquisition Act, cannot be quashed. The Division Bench also literally presumed that the order in the earlier writ petition quashing the proceedings under Sections 4(1) and 6 of the Land Acquisition Act was subsequently reversed in appeal. Even though as against the order in W.P.No.13211 of 1986 dated 24.10.1991, no appeal was filed, the Division Bench, relying upon the judgment of the Hon'ble Supreme Court, in *Shenoy and Co. (supra)*, dismissed the writ appeals by order dated 23.08.2011.



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2.9. These review applications are filed mainly on the ground that the acquisition proceedings which had become final, the order of the learned Single Judge as well as the judgment of the Division Bench ignoring the finality of the order in the earlier writ petition in W.P.No.321 of 1996 dated 24.10.1991 quashing land acquisition proceedings insofar as the petitioners lands is illegal and a manifest error, apparent on the face of record even on the admitted facts.

3. The learned Senior Counsel appearing for the petitioners pointed out that the legal implication of the finality reached by virtue of the earlier order quashing the acquisition proceedings, cannot be ignored by applying certain principles and following a few precedents which are not applicable on the admitted facts of the present case. The learned Senior Counsel relied upon few judgments which are also relied upon by the learned Single Judge as well as the Division Bench, while rejecting the petitioners case and pointed out that those judgments are entirely different and submitted that there is no quarrel with the proposition enunciated in those judgments and the applicability of principle on the facts and circumstances of this case alone is the issue. The learned Senior Counsel then submitted that substantial injustice is caused to the petitioners. It is also brought to our notice that a judgment which has become final, cannot be



set at naught and the Division Bench ignoring the law settled, has held against the petitioners.

4. This Court considered the lengthy arguments of the learned Senior Counsel and the submissions of the learned Special Government Pleader and the learned Standing Counsel for the State Housing Board.

5. The simple facts that the petitioners' earlier writ petition in W.P.No.13211 of 1986 challenging the notification issued under Sections 4(1) and 6 of the Land Acquisition Act was allowed on 24.10.1991 and that the said order has become final insofar as the petitioners land are not disputed.

6. In *Shenoy and Co. (supra)*, the Hon'ble Supreme Court rejected the contention that the judgment of the Hon'ble Supreme Court upholding the constitutional validity of a statute cannot be applied to others who are not parties. The Hon'ble Supreme Court in the said context observed that by setting aside the judgment of High Court, the mandamus issued by the High Court is rendered ineffective not only in one case but in all cases. When the Hon'ble Supreme Court uphold the validity of a statute in one case, the same is binding all by virtue of Article 141 of the Constitution of India. The said judgment



cannot be relied upon to invalidate a previous judgment, inter parties which has become final. In this case, the land acquisition proceedings were quashed by this Court earlier along with a batch of cases on the ground of vagueness, relying upon the earlier judgment of the Hon'ble Supreme Court. It is true that notification under Section 4(1) of the Land Acquisition Act for Housing Board Scheme cannot be quashed on the ground of vagueness. But, the orders quashing acquisition proceedings cannot be invalidated without a challenge to the order by independent appeal.

7. There are many grounds to challenge the acquisition proceedings. When the petitioners raised several grounds, the writ petition filed by the petitioners were clubbed as a batch and the acquisition proceedings in respect of petitioners land was quashed following the judgment of the Division Bench of this Court in other cases. Since the facts were not disputed, the writ petition filed by the petitioners earlier was also allowed. The acquisition proceedings were quashed. This order dated 24.10.1991, quashing the notification under Sections 4(1) and 6 of the Land Acquisition Act, in respect of petitioners land had become final as no further appeal was filed.



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8. It is pertinent to mention that the petitioners though raised several other grounds, the notifications were quashed in writ petitions earlier by this Court in a batch of cases on 08.10.1991, only on the ground that similar notifications were quashed in another batch of writ petitions, by order dated 08.10.1991. It is now admitted that the earlier batch of writ petitions were allowed on the ground that the notifications under Section 4(1) of the Land Acquisition Act were vague (*i.e.*, the public purpose is not stated with clarity). All the writ petitions including the writ petition filed by the petitioners were allowed not on any other ground. It is pertinent to mention that the petitioners have raised several other grounds. In such circumstances, the petitioners are also entitled to canvas other grounds, if an appeal is filed challenging the order allowing the petitioners' writ petition.

9. However, in the absence of an appeal, the notifications under Sections 4(1) and 6 of the Land Acquisition Act quashed, insofar as the petitioners are concerned cannot be revived, merely because the Hon'ble Supreme Court in other cases took a different view. The law settled by the Hon'ble Supreme Court may be a good reason/ground to file an appeal as against the order of the learned Single Judge dated 24.10.1991 quashing the notifications under Sections 4(1) and 6 of the Land Acquisition Act in W.P.No.13211 of 1986. In the



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absence of any appeal, the award passed under Section 11 cannot stand. Now, the acquisition proceedings quashed by order of Court has been validated by rendering the judgment inter parties invalid and inoperative relying upon a few judgments of the Hon'ble Supreme Court which have no application to the facts.

10. Hence, in our view, the order dated 23.08.2011 in W.A.No.2011 and 2012 of 2010 suffers on account of error apparent on the face of the record as the judgment is on an enormous assumption of law by wrongly applying a few judgments which have no application on the admitted facts. Therefore, this Court has no hesitation to allow these review applications. Once the acquisition proceedings are quashed and the order quashing acquisition proceedings has reached finality, the writ petition in W.P.No.11504 of 2006 to quash the order refusing to grant patta in favour of the petitioners, citing acquisition has to be allowed. Similarly, writ petition in W.P.No.43770 of 2006 ought to have been allowed as the Housing Board has no defence. Therefore, both the writ appeals stand allowed and the order of the learned Single Judge dated 25.08.2010 dismissing the writ petitions is set aside. Both the writ petitions viz., W.P.Nos.11504 and 43770 of 2006 stand allowed. No costs.

[S.S.S.R.,J.]

[A.D.M.C., J.]



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Fort St. George, Chennai 600 009

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