



W.A.No.935 of 2023 etc. batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 22.03.2024

DELIVERED ON : 02.04.2024

CORAM :

THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.A.Nos.935, 936, 939, 1674, 1675, 1679, 1680, 1682, 1683,
1684, 1688, 1689, 1692, 1693, 2287 and 2296 of 2023

and

C.M.P.Nos.9319, 9322, 9328, 14895, 14901, 14916, 14913, 14920,
14921, 14924, 14929, 14937, 14971, 14976, 19659 and 19689 of
2023

W.A.No.935 of 2023:

Karthik Subramaniam

.. Appellant

Vs

1.State of Tamil Nadu,
rep. by its Secretary to Government,
Housing & Urban Development Department,
Fort St. George, Chennai-600 009.

2.The Chairman,
Tamil Nadu Housing Board,
Nandanam,
Chennai-600 035.



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3.The District Collector,
District Collectorate,
Thumbankuruchi Village,
Namakkal District.

4.The Special Tahsildar,
Salem Neighbourhood Scheme,
Salem.

.. Respondents

Prayer in W.A.No.935 of 2023 : Appeal filed under Clause 15 of the Letters Patent against the order dated 10.8.2022 passed in W.P.No.14107 of 2015.

For the Appellant
in all WAs

: Mr.B.Kumar
Senior Counsel
and Mr.Satish Parasaran
Senior Counsel
for Mr.S.Senthil
and Mr.D.Vairamoorthy

For the Respondents
in all WAs

: Mr.P.S.Raman
Advocate-General
Mr.A.Edwin Prabakar
State Government Pleader
assisted by
Mr.K.Karthik Jegannath
and Mr.R.Siddharth
Government Advocates
for respondents 1 and 3

: Mr.A.M.Ravindranath
Jeyapal
for respondent Nos.2 and 4

and batch cases



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COMMON JUDGMENT

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THE CHIEF JUSTICE

We have heard Mr.B.Kumar and Mr.Satish Parasaran, learned Senior Advocates for Mr.S.Senthil, learned counsel for the appellants; Mr.P.S.Raman, learned Advocate-General and Mr.A.Edwin Prabakar, learned State Government Pleader, assisted by Mr.K.Karthik Jegannath and Mr.R.Siddharth, learned Government Advocates for respondent 1 and 3; and, Mr.A.M.Ravindranath Jeyapal, learned Standing Counsel for respondents 2 and 4.

2. The present appellants are the original writ petitioners. The original writ petitioners have challenged the notification issued under Section 4(1) of the Land Acquisition Act, 1894 [for brevity, "*the Act of 1894*"] by filing writ petitions.

3. The learned Single Judge, under the judgment and order dated 10.8.2022, declared that the declaration issued under Section 6 of the Act of 1894 is a nullity, as the acquisition proceedings stood completed under notification dated 12.11.1981 and the declaration



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dated 31.03.1984. The learned Single Judge held that the order in W.A.Nos.875 and 876 of 2009 having been passed in clear abhorrence to law is null and void. The learned Single Judge also held that the acquisition having been made under the Act of 1894, which has been confirmed by this Court, the petitioners would be entitled to receive the compensation in terms of the provisions of Act of 1894 subject to fulfilling the conditions as provided for under Section 30 of the Act of 1894.

4. The prayers made in the writ petitions slightly differ and, for ready reference, they are reproduced hereunder:

"... to issue a writ of certiorari calling for the records comprised in G.O.Ms.No.283 Housing and Urban Development (LA4-2) Department dated 25.11.2013 and consequential 4(1) Notification dated 2.12.2013 published in the Dhinamani Newspapers on 10.12.2013 and the Government Gazette No.49 dated 18.12.2013 Part II Section 2 on the file of the first respondent, quash the same." [W.P.Nos.4026 to 4029 of 2014]

"..... to issue a writ of certiorari calling for the records comprised in G.O.Ms.No.283 Housing and Urban



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Development (LA4-2) Department dated 25.11.2013 and consequential 4(1) Notification dated 2.12.2013 published in the Dhinamani Newspapers on 10.12.2013 and in the Government Gazette No.49 dated 18.12.2013 Part II Section 2 on the file of the first respondent and the consequential notice in ROC 330/90 dated 28.1.2014 on the file of the fourth respondent, quash the same.” [W.P.Nos.4131 to 4134 of 2014]

“..... to issue writ of certiorari calling for the records comprised in G.O.Ms.No.182 Housing and Urban Development (LA4-2) Department dated 16.12.2014 on the file of the first respondent, quash the same.”[W.P.Nos.14105 to 14107 of 2015; 20981 to 20985 of 2015]

5. Learned Senior Advocates and the Advocates for the appellants/writ petitioners submit that the learned Single Judge has committed a grave error in law while passing the impugned order. The acquisition, pursuant to Section 4(1) notification dated 12.11.1981, was set aside by a Division Bench this Court in W.A.Nos.875 and 876 of 2009, dated 22.12.2011. The SLP preferred against the said judgment and order dated 22.12.2011 is also dismissed. The said



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judgment has attained finality and would operate as *res judicata*.
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6. The writ petitions were filed challenging the fresh notification issued by the State under Section 4(1), dated 25.11.2013 on the ground that as per the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 [for short, "*the Act of 2013*"], the State has failed to take the social impact assessment.

7. Per contra, learned State Government Pleader would strenuously contend that some of the present petitioners, who are the original land owners, had filed a writ petition, bearing No.8888 of 1984, challenging Section 4(1) notification dated 12.11.1981. The said writ petition was allowed by the learned Single Judge under the judgment and order dated 19.7.1994 thereby quashing the land acquisition proceedings. The Government filed W.A.No.999 of 1995. A Division Bench of this Court allowed the said writ appeal under the judgment and order dated 22.1.2001. The original land owners sold part of the lands under acquisition in between 1995 and 2004. These purchasers along with the original land owners again filed writ



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petitions, bearing Nos.30186 of 2007 and 4096 of 2008, challenging the same Section 4(1) notification, Section 6 declaration and the award dated 28.2.1989 on the ground that the compensation was not paid to the land owners. The said writ petitions were dismissed by the learned Single Judge under the judgment and order dated 9.6.2009. The writ appeals, bearing Nos.875 and 876 of 2009, filed by the original land owners were allowed under the judgment and order dated 22.12.2011.

8. Learned State Government Pleader further submitted that the purchasers do not have right to challenge the award. The original land owners had already challenged Section 4(1) notification issued in the year 1981. The challenge was negated by the Division Bench of this Court. The original land owners and the purchasers do not get right to challenge the award again. As such, the judgment of the Division Bench of this Court in W.A.Nos.875 and 876 of 2009 has been rightly held *per incuriam* by the learned Single Judge in the impugned judgment.



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9. To substantiate his contention that the subsequent purchasers do not have any right to claim lapse of acquisition proceedings, learned State Government Pleader relies on the judgment of the Apex Court in the case of *Delhi Development Authority v. Damini Wadhwa and others*, (2022) 10 SCC 519. He further submits that the bar of *res judicata* would not apply in the present case. He relies on the judgment of the Apex Court in the case of *Daryao and others v. State of U.P. and others*, AIR 1961 SC 1947.

10. It is submitted by learned State Government Pleader that the previous decision of the Court in challenging the notification dated 12.11.1981 would operate as *res judicata* for the subsequent proceedings and, as such, the petitioners had no right to file the subsequent writ petition challenging the same notification, award and the judgment of Division Bench of this Court in W.A.Nos.875 and 876 of 2009. As such, the challenge is bad in law and barred by the principles of *res judicata*. He relies upon the judgment of the Apex Court in the case of *State of Karnataka and another v. All India Manufacturers Organisation and others*, (2006) 4 SCC 683.



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11. Learned State Government Pleader submits that only on the ground that the compensation is not paid, the award could not have been set aside by the Division Bench in W.A.Nos.875 and 876 of 2009, so also the subsequent purchaser is not entitled to claim lapse of acquisition proceedings. He relies on the judgment of the Apex Court in the case of *Delhi Administration, through Secretary, Land and Building Department and others v. Pawan Kumar and others, (2022) 7 SCC 470*.

12. We have considered the submissions canvassed by learned counsel for the parties. We have also perused the exhaustive judgment delivered by the learned Single Judge.

13. It would be appropriate to refer the chronology of dates and events. The same would be relevant for navigating through the facts:

<i>Dates</i>	<i>Events</i>
12.11.1981	Sec.4(1) Notification in G.O.(Ms) No.976 issued in respect of 8.65 Acres of land in S.No.19/2, Vagurampatti Village, Namakkal.
16.12.1981	Notification published in the Government Gazette



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<i>Dates</i>	<i>Events</i>
16.06.1982	Sec.5A enquiry was conducted
31.03.1984	Draft declaration under Secs.6 and 7 approved by the Government vide G.O.(Ms) No.294.
25.04.1984	Sec.6 declaration published in the Government Gazette.
01.08.1984	An errata was published in the Government Gazette.
-	W.P.No.8888 of 1984 filed by the land owners seeking quashment of 4(1) Notification and obtained interim stay of the acquisition proceedings.
03.04.1987	High Court modified the interim stay as “interim stay granted is made absolute and continued to the dispossession of the petitioner only. There will be no stay in other respects”.
24.11.1988	Notices under Sec.9(1)(3) and 10 were issued fixing the date for award enquiry on 12.12.1988.
12.12.1988	Award enquiry was conducted.
28.02.1989	Award No.6/88-89 was passed determining the compensation amount at Rs.4,95,719.85.
11.10.1989	Compensation amount was deposited in SBI, Nammakal instead of Sub-Court and the Special Tahsildar requested the DRO, Namakkal to withdraw the compensation amount from the bank and deposit it in Court.
07.08.2007	Compensation amount of Rs.4,95,719.85 was deposited in the Sub-Court, Namakkal to the credit of LAOP No.8 of 2007.



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<i>Dates</i>	<i>Events</i>
19.07.1994	W.P.No.8888 of 1984 came to be allowed quashing the land acquisition proceedings.
08.11.1994	W.A.No.999 of 1995 filed by the Government as against the writ petition order.
12.07.1995 to 17.11.2004	The original land owners sold the lands (under acquisition) to various persons, namely - (i) Vijayakumar – 83 Cents – Doc.No.1666/95, dt. 12.07.1995. (ii) Guhanbabu – 83 Cents – Doc.No.1667/95, dt. 12.07.1995. (iii) Dr.R.K.Kulandaivelu – 83 Cents – Doc.No.1668/95 dt. 12.07.1995. (iv) Jothimani – 83 Cents – Doc.No.1669/95, dt. 12.07.1995. (v) P.Subramaniam – 1.59 Ac – Doc.No.2584/95, dt. 14.11.1995 Doc.No.492/97, dt. 17.03.1997; Doc.No.1242/97, dt.02.07.1997; Doc.No.267/99, dt. 28.01.1999; Doc.No.314/99 dt. 03.02.1999; Doc.No.1371/99, dt. 19.05.1999. Thus, out of the total extent of 8.65 Acres, having sold an extent of 5.66 Acres, the original land owners Ramasamy and others retained the remaining 2.99 Acres with them.
22.01.2001	W.A.No.999 of 1995 filed by the Government came to be allowed by the Division Bench, upholding the acquisition proceedings.
2006	W.P.No.36845 of 2006 filed by the land owners for consideration of representation seeking re-conveyance of the lands acquired.



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<i>Dates</i>	<i>Events</i>
01.11.2006	High Court directed the authorities concerned to consider and pass orders on the representation.
18.01.2007	Land owners' representation for re-conveyance was rejected by the Government.
2007 & 2008	W.P.No.30186 of 2007 filed by S.Ramasamy and 15 others and W.P.No.4096 of 2008 filed by Nallammal and Periasamy seeking quashment of the above 4(1), 6 Dec. & Award, on the ground that compensation amount was not paid to the land owners.
09.06.2009	W.P.Nos.30186 of 2007 and 4096 of 2008 were dismissed by the learned Single Judge.
22.12.2011	W.A.Nos.875 and 876 of 2009 preferred by the land owners were allowed by the Division Bench.
10.05.2012	SLP No.13267 of 2012 filed by the Government was dismissed by the Supreme Court.
25.11.2013	New Sec.4(1) Notification in G.O.(Ms) No.283 issued in respect of 6.75 Acres of land in S.No.19/2. Land Owners as per New 4(1) Notification (1) Subramaniam, S/o Ponnusamy (2) Nallammal, W/o Sengoda Gounder (3) Subban, S/o Sengda Gounder (4) Natarajan, S/o Sengoda Gounder (5) Ramasamy, S/o Sengoda Gounder (6) Kamalam, D/o Palanisamy (7) Subramani, S/o Ponnusamy (8) Guhanbabu, S/o Natarajan (9) Vijayakumar, S/o Vasudeva Reddiar (10) Kulandaivel, S/o Rajalinga Mudaliar (11) Kumaravel, S/o Vellappan



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<i>Dates</i>	<i>Events</i>
10.12.2013 and 18.12.2013	Paper publication and Gazette publication of the above 4(1) Notification
12.02.2014	Sec.5A enquiry conducted
16.12.2014	Sec.6 declaration published
17.12.2014	Corrigendum to Sec.6 declaration issued

14. It would appear that, for the first time, the Government had issued notification under Section 4(1) of the Act of 1894 on 12.11.1981 making its intention to acquire the lands. The same was challenged by the original land owners by filing W.P.No.8888 of 1984. Initially, stay was granted. However, on 3.4.1987, the order of stay was modified. The order of stay to pass an award was vacated and the same was granted only to the extent of dispossession. Award was passed on 28.02.1989. The writ petition, bearing No.8888 of 1984, filed by the land owners was allowed by the learned Single Judge under the judgment and order dated 19.07.1994 thereby quashing the land acquisition proceedings. The State filed W.A.No.999 of 1995 against the said judgment and order passed in W.P.No.8888 of 1984.



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The writ appeal filed by the State was allowed on 22.01.2001.

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15. It appears that, during the interregnum i.e. from the date of delivering the judgment by the learned Single Judge quashing the acquisition proceedings and the judgment delivered by the Division Bench of this Court allowing the appeal and upholding the notification and the declaration, the original land owners sold part of the land under acquisition. After about seven years, the original land owners and the purchasers filed W.P.Nos.30186 of 2007 and 4096 of 2008 respectively seeking quashment of the award, probably, on the ground that the compensation amount was not paid to the land owners. The writ petitions filed by the petitioners therein were dismissed by the learned Single Judge. W.A.Nos.875 and 876 of 2009 were filed against the judgment and order passed in W.P.Nos.30186 of 2007 and 4096 of 2008. The Division Bench of this Court, under its judgment and order dated 22.12.2011, allowed W.A.Nos.875 and 876 of 2009 setting aside the award. The State filed S.L.P.No.13267 of 2012. The Apex Court dismissed the SLP under its order dated 10.05.2012.

16. It appears that the State accepted the judgment of the



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Division Bench of this Court in W.A.Nos.875 and 876 of 2009 and confirmed by the Apex Court setting aside the award dated 28.2.1989. The State initiated fresh acquisition proceedings by issuing notification under Section 4(1) of the Act of 1894 on 25.11.2013. The said notification was challenged by the present appellants by filing W.P.No.4026 of 2014 and other connected writ petitions.

17. The impugned judgment and order came to be passed in W.P.No.4026 of 2014 and other connected writ petitions on the ground that there was no need for the State to issue a fresh acquisition, in view of the judgment of the Division Bench dated 22.01.2001 in W.A.No.999 of 1995 upholding the acquisition proceedings and the purchasers have no right to file subsequent writ petitions and the judgment delivered by the Division Bench of this Court in W.A.Nos.875 and 876 of 2009 is in clear abhorrence to law, null and void.

18. After the first round is over, the purchasers and the original land owners have filed writ petitions challenging the award. In the earlier writ petition, the award was not a subject-matter of challenge. However, the same was challenged in W.P.Nos.30186 of 2007 and



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4096 of 2008. The said writ petitions were dismissed. The appeals [W.A.Nos.875 and 876 of 2009] filed against the dismissal of the said writ petitions were allowed thereby setting aside the award. The State filed SLP before the Apex Court and the Apex Court has dismissed the SLP. The quashing of the award was on a different ground, than the one agitated in the earlier round of litigation i.e. W.P.No.8888 of 1984.

19. Even assuming that the judgment delivered by the Division Bench of this Court in W.A.Nos.875 and 876 of 2009 dated 22.12.2011 to be erroneous, the same is binding on the parties. The said judgment would operate as *res judicata* inter parties. The State has also not challenged the said judgment. For a judgment to be termed as void and non-est, the same has to be passed by a Court inherently lacking jurisdiction or should have been obtained by fraud. It is not the case of the State that the judgment in W.A.Nos.875 and 876 of 2009 was a result of fraud played by the petitioners. No ground of fraud was put forth, nor it is the case that the earlier judgment in W.A.Nos.875 and 876 of 2009 was obtained by suppression of facts. The facts were placed before the Court.



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20. According to the learned Single Judge, the judgment of the Division Bench was erroneous. The ground on which the acquisition was set aside was illegal. The cause of action for filing the subsequent writ petition was different. The purchases were made after the award was set aside by the learned Single Judge. However, the appeal filed by the State was allowed in the year 2001. Fresh writ petitions were filed in the year 2007 and 2008 albeit on different grounds challenging the award. In the first round of litigation, the award was not a subject-matter of challenge. Only the notification was challenged.

21. The Apex Court, in the case of *Kalinga Mining Corporation v. Union of India and others*, (2013) 5 SCC 252, has held that “*adjudication of facts attaining finality inter parties even if found to be based on illegal interpretation later altered/found to be erroneous, reiterated, cannot be reopened inter parties and would operate as res judicata regardless of subsequent changed view of law*”.

22. The decision of a Court having jurisdiction even if erroneous is binding between the parties unless set aside by the higher Court or unless the said judgment is reviewed by the same Court. Once the



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judgment is concluded inter parties, the parties cannot be allowed to re-agitate the issue decided by the Court of competent jurisdiction.

23. The learned Single Judge, while passing the impugned judgment and order, has questioned the decision of the Division Bench in W.A.Nos.875 and 876 of 2009, dated 22.12.2011. The learned Single Judge cannot sit over the judgment of the Division Bench as an appellate court. The judgment of the Division Bench of this Court in W.A.Nos.875 and 876 of 2009 inter parties had become final and is binding upon all the parties to the proceedings. Only because the learned Single Judge found that the judgment to be bad in law, the same cannot be said to be not binding inter parties. The said judgment of the Division Bench was confirmed by the Apex Court, wherein the SLP was dismissed *in limine*. The judgment of the High Court may not merge with the judgment of the Apex Court, as the SLP was dismissed *in limine*. However, the same would be binding upon the parties to the proceedings before the High Court. The State also did not seek review of the judgment in W.A.Nos.875 and 876 of 2009. On the contrary, the State accepted the said judgment after the dismissal of the SLP and proceeded to issue a fresh notification under



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Section 4(1) of the Act of 1894 on 25.11.2013. Section 5A enquiry was conducted on 12.2.2014. Section 6 declaration was published on 16.12.2014 and corrigendum to Section 6 declaration was published on 17.12.2014. The notifications dated 10.12.2013 and 18.12.2013 were challenged before the learned Single Judge, in which, the impugned judgment is passed. The said notifications do not suffer from any illegality, nor the declaration suffers from any illegality. The same are perfectly maintainable.

24. As per Section 24 of the Act of 2013, if the acquisition proceedings are initiated under the Act of 1894, the same shall be continued under the Act of 1894. The only word of caution is that, if the award is passed after coming into force the Act of 2013, then the compensation is to be determined as per the Act of 2013.

25. In our considered view, the learned Single Judge was not correct in sitting over the judgment of the Division Bench in W.A.Nos.875 and 876 of 2009 dated 22.12.2011, which was confirmed by the Apex Court.



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26. In fact, if we go by the dates and events, then earlier Section 4(1) notification was issued on 12.11.1981 and Section 6 declaration was published on 25.4.1984 i.e. after the lapse of more than two years. As per Section 11-A of the Act of 1894, Section 6 declaration has to be published within two years from the date of 4(1) notification. The same is beyond two years. After Section 6 declaration is published on 25.4.1984, the award has to be passed within one year. Section 6 declaration was issued on 25.4.1984. In a writ petition, bearing No.8888 of 1984, filed by the land owners, there was an interim stay to the acquisition proceedings. The same was modified on 3.4.1987 and the respondents therein were permitted to pass the award. The award came to be passed only on 28.2.1989. The same was also beyond the period of one year from the date the stay was vacated. On the ground of Section 11-A also the said acquisition under the notification dated 12.11.1981 would stand lapsed. However, we need not enter into the said aspect, in view of the judgment of the Division Bench of this Court dated 22.12.2011 passed in W.A.Nos.875 and 876 of 2009 setting aside the acquisition proceedings. The said judgment having been in the same proceedings, the same is binding upon all the parties.



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27. In such view of the matter, we are unable to subscribe to the reasoning given by the learned Single Judge in the order passed in the writ petitions. The impugned judgment passed by the learned Single Judge is set aside. At the same time, challenge to the fresh notification issued under Section 4(1) of the Act of 1894 dated 10.12.2013 and 18.12.2013 fails. The writ petitions, as such, are dismissed for the reasons given in the present judgment. The respondent State shall proceed further with the acquisition proceedings under the Act of 1894. However, the compensation shall be determined as per the Act of 2013.

28. With the aforesaid observation, the writ appeals are disposed of. There shall be no order as to costs. Consequently, all the connected miscellaneous petitions are closed.

(S.V.G., CJ.)

(D.B.C., J.)

02.04.2024

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To

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- 1.The Secretary to Government,
State of Tamil Nadu,
Housing & Urban Development Department,
Fort St. George, Chennai-600 009.
- 2.The Chairman,
Tamil Nadu Housing Board,
Nandanam,
Chennai-600 035.
- 3.The District Collector,
District Collectorate,
Thumbankuruchi Village,
Namakkal District.
- 4.The Special Tahsildar,
Salem Neighbourhood Scheme,
Salem.



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THE HON'BLE CHIEF JUSTICE
AND
D.BHARATHA CHAKRAVARTHY,J.

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