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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 10.01.2024

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**THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
AND
THE HONOURABLE MR. JUSTICE K.KUMARESH BABU**

**Writ Appeal Nos.4337 & 4338 of 2019
and C.M.P.Nos. 27932 & 27933 of 2019**

M.Baby Saroja ... Appellant in W.A.No.4337 of 2019
S.Muthurajan ... Appellant in W.A.No.4338 of 2019

Vs

- 1.Special Commissioner and Commissioner of
Land Administration,
Cheapauk, Chennai – 5.
- 2.District Collector,
Salem District.
- 3.Special Tahsildar (Land Acquisition),
Neighbourhood Scheme, Tamil Nadu Housing Board,
Salem – 8.
- 4.Tamil Nadu Housing Board,
Represented by its Managing Director,
No.493, Anna Salai, Nadanam, Chennai – 35.
- 5.State of Tamil Nadu,
Housing and Urban Development Department,
Secretariat, Chennai – 9. ... Respondents in both the W.As.



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COMMON PRAYER: Writ Appeals have been filed under Clause 15 of Letter Patent against the order dated 19.09.2019 made in W.P.Nos.4146 & 4081 of 2007.

For Appellant(s)
in both W.As. : Mr.V.R.Rajasekaran

For RR1, 2, 3 & 5
in both W.As. : Mr.K.V.Sajeev Kumar
Special Government Pleader

For R4 in both W.As.: Mr.A.M.Ravidranath Jeyapal
Standing Counsel for TNHB

COMMON JUDGMENT

These Intra-Court Appeals have been preferred against the order of the learned Single Judge rejecting the Writ Petitions filed by the petitioners challenging the 4(1) Notification dated 04.12.2004 issued by the 2nd respondent.

2. Heard Mr.V.R.Rajasekaran, learned counsel for the appellant(s) and Mr.K.V.Sanjeev Kumar, learned Special Government Pleader appearing on behalf of the respondents 1, 2, 3 & 5.



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3. Mr.V.R.Rajasekaran, learned counsel for the appellant(s) would submit that the appellants(s) had purchased the property in the year 1989 and a Notification under Section 4(1) of the Land Acquisition Act, 1894 was issued in the year 1991 including the properties purchased by the appellants. The same had been followed up with a declaration under Section 6. The appellants had challenged the land acquisition proceedings *inter-alia* contending that in spite of the purchase of the land by the appellants and the mutation of Revenue records in favour of the appellants, even prior to Section 4(1) Notification, the names of the appellants were not shown in the 4(1) declaration and only the names of the vendors of the appellants were shown. Therefore, they did not have the opportunity to submit their objections. Pending the Writ Petitions, the appellants also offered to provide 40 feet for the purpose of road instead of the proposal of the Tamil Nadu Housing Board for laying a 60 feet road. The same was rejected by the respondents. The Writ Petitions filed by the appellants were allowed by this Court on 04.09.2001 on the grounds raised by the appellants. Thereafter, the 2nd respondent had issued a fresh 4(1) Notification only for acquiring the lands of the appellants which was followed by Section 6 declaration. Here



again, the appellants were not aware of the proceedings as the Notification was not notified in the Official Gazette as provided under the provisions of the Enactment. He would submit that 4(1) Notification had been published in a District Gazette which is contrary to the provisions of the Section 4(1), which only prescribes publication of Notification under the Official Gazette, which would mean, the Notification would ought to have been published in a State Gazette. In support of his contention, he had placed reliance of the judgment of this Court reported in **2004 (1) LW 38** of a learned Single Judge to persuade us to come to a conclusion that the Official Gazette specified in 4(1) Notification would only mean the State Gazette and not the District Gazette. He had also relied upon a judgment of the Division Bench of this Court reported in **2009 (1) LW 608** to contend that the satisfaction of the State as specified in Section 4(1) has also not been made. He would submit that however, the learned Single Judge without considering these aspects, had passed the above impugned order. He would submit that the learned Single Judge had simply relied upon the counter affidavit filed by the respondents and also the fact that Section 6 declaration has been made in the manner known to law and that the Award has been passed in rejecting the



claim of the appellants.

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4. The learned counsel for the appellants would submit that when the initiation of the proceedings itself has been made without following the due process of law, particularly the non-publication of the 4(1) Notification in the State Gazette, the subsequent proceedings would all have to be declared *non-est* and on that ground alone, he would submit that the Writ Petitions ought to have been allowed by the learned Single Judge and therefore, he would seek interference of this Court of the order passed by the learned Single Judge.

5. Countering his arguments Mr.K.V.Sajeev Kumar, learned Special Government Pleader appearing on behalf of the respondents 1, 2, 3 & 5 would submit that it is not disputed by the appellants that they were not aware of the proceedings of land acquisition. Section 4(1) Notification had been published in a District Gazette, where the appellants reside and that the non-publication of the 4(1) notification in the State Gazette would not render the 4(1) Notification as illegal as it could utmost only be said to be irregular



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or improper. Further, he would submit that the Special Commissioner had published the Section 6 declaration which itself would suffice to satisfy that there is an application of mind by the State in being satisfying the above requirement of the land. Therefore, he would submit that there is no infirmity or illegality in the order passed by the learned Single Judge warranting interference of this Court.

6. Mr.A.M.Ravindranath Jeyapal, learned Standing Counsel appearing for the 4th respondent/ beneficiary Housing Board would draw attention of this Court to the counter affidavit filed by the 3rd respondent and contend that there are about 84 houses that had been constructed by the Tamil Nadu Housing Board under the Self-financing Scheme and 36 plots under the Area Development Scheme were also implemented and allowed to the public and only if the approach road is formed in the appellants land, the allottees would be able to enjoy the property purchased by them. Therefore, the lands of the appellants were essentially required by the Tamil Nadu Housing Board for proper development of the Scheme that has already been implemented in the lands in which the acquisition had become final. He



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would also support the submissions made by the learned Special Government Pleader from the legal aspect with regard to the issuance of 4(1) Notification in the District Gazette.

7. We have considered the rival submissions made by the respective counsels appearing on either side and perused the materials available on record.

8. The *lis* that has to be decided in these Writ Appeals is as to whether the respondents have followed the provisions of the Land Acquisition Act, 1894 particularly the provisions of Section 4(1) which was the basis of initiation for acquisition of lands belonging to the appellants.

9. It is not in dispute that the lands were originally sought to be acquired as early as in the year 1991 and the same had been quashed in respect of the appellants lands as there has been an infraction of the provisions of the Enactment. Thereafter, the respondents seems to have initiated a fresh land acquisition proceedings in the year 2004. It is an



admitted case, even as recorded by the learned Single Judge that the District Collector had issued the Section 4(1) Notification and had published the same in Salem District Gazette.

10. The learned counsel for the appellants had vehemently contended that the 4(1) notification could not have been issued in the Salem District Gazette and should have been issued only in the Gazette published by the State. For better appreciation of his arguments, it would be relevant to look into the provisions of Section 4(1) Enactment. Section 4(1) reads thus under:-

“4. Publication of preliminary notification and power of officers thereupon. - (1) Whenever it appears to the [appropriate Government] the land in any locality [is needed or] is likely to be needed for any public purpose [or for a company], a notification to that effect shall be published in the Official Gazette [and in two daily newspapers circulating in that locality of which at least one shall be in the regional language], and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality [(the last of the dates of such publication



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and the giving of such public notice , being hereinafter referred to as the date of the publication of the notification) ”

11. The provisions of Section 4(1) mandates that a Notification will have to be published in the Official Gazette. Official Gazette had not been defined under the Act. In such an event, it is incumbent upon us to fall upon the definition of Official Gazette given under the General Clauses Act. Sub- Section 39 of Section 3 of the General Clauses Act defines the term “Official Gazette”. For better appreciation, the same is extracted hereunder.

“ 3. Definitions.—In this Act, and in all Central Acts and Regulations made after the commencement of this Act, unless there is anything repugnant in the subject or context,—

.....

(39) “official Gazette” or “Gazette” shall mean the Gazette of India or the Official Gazette of a State”

12. The General Clauses Act defines that the “Official Gazette” or the “Gazette” as the “Gazette of India” or the “Official Gazette” of the State.



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13. Admittedly, in this case, Section 4(1) Notification had not been published in the Official Gazette of the State. But, it has been published in the District Gazette. The same is explicit in the counter affidavit filed by the respondents before the learned Single Judge, which has also been recorded in the order impugned before us. The learned Single Judge had proceeded to over-come the said infirmity by concluding that Section 6 had been issued by the Special Commissioner as contemplated under the Act which would cure that fact.

14. We are in disagreement with such a finding given by the learned Single Judge. In that aspect, it would be useful to refer to the judgments of the Hon'ble Apex Court reported in *AIR 2012 SC 364, 2000 (8) SCC 395 and 2005 (3) SCC 422*.

15. In the aforesaid judgments, the Hon'ble Apex Court had reiterated the principle that when the initial action itself is not in consonance with the law, then all the subsequent, consequential, further proceedings consequent to the initial action would all be *non-est* and have to be



necessarily set aside. For better appreciation, the relevant paragraphs are extracted hereunder:-

1. State of Punjab Vs. Davinder Pal Singh Bhullar, (2011) 14 SCC 770 .

“ Para 107 – It is a settled legal proposition that if initial action is not in consonance with law, all subsequent and consequential proceedings would fall through for the reason that illegality strikes at the root of the order. In such a fact situation, the legal maxim sublato funamento cadit opus meaning thereby that foundation being removed, structure/ work falls, comes into play and applies on all scores in the present case.

Para 111 – Thus, in view of the above, we are of the considered opinion that the orders impugned being a nullity, cannot be sustained. As a consequence, subsequent proceedings/ orders/ FIR/ investigation stand automatically vitiated and are liable to be declared non-est.

Para 116 – In view of the above, the appeals succeed and are accordingly allowed. The impugned orders challenged herein are declared to be a nullity and as a consequence, the FIR registered by CBI is also quashed.”



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2. *Badrinath Vs Government of T.N., reported in 2008 (8) SCC 395.*

“Para 27. This flows from the general principle applicable to “consequential orders”. Once the basis of a proceeding is gone, may be at a later point of time by order of a superior authority, any intermediate action taken in the meantime – like the recommendation of the State and by the UPSC and the action taken thereon – would fall on the ground. This principle of consequential orders which is applicable to judicial and quasi-judicial proceedings is equally applicable to administrative orders. In other words, where an order is passed by an authority and its validity is being reconsidered by a superior authority (like the Governor in this case) and if before the superior authority has given its decision, some further action has been taken on the basis of the initial order of the primary authority, then such further action will fall on the ground the moment the superior authority has set aside the primary order.”

3. *Mangal Prasad Tamoli Vs Narvadeshwar Mishra, reported in 2005 (3) SCC 422.*



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Para 15If this remand order was bad in law, then all further proceedings consequent thereto would be non-est and have to be necessarily set aside. That the appellants are entitled to urge this point even at this point of time, is supported by the authority of this Court in Ganga Dhar, AIR 1958 SC 770."

16. During the pendency of these Intra-Court Appeals, the earlier Bench had issued a direction to the District Town and Country Planning Officer to submit his report as to whether the road is required. A perusal of the report would suggest that the lands of the petitioners/ appellants are still required for the public purpose. The report also suggests that the present 9 meter road is insufficient and at least as per the Development Rules that has been formulated by the Government of Tamil Nadu under the Tamil Nadu Combined Development and Building Rules, 2019, the minimum width of the road in the present case at least should be 12 meter in width.

17. From a reading of the report, it is clear that the approach



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road of 9 meters road is available to the beneficiaries for the purchase of the land from the Housing Board. Therefore, the claim of the 3rd respondent, that the residents of the locality has been put to hardship as there is no approach road to the National Highways could only be a false statement. The statement made by the 3rd respondent in his counter affidavit filed before this Court, dated 20.10.2023, the relevant paragraph of the counter affidavit is extracted hereunder:-

*“ 17.And further I submit that the petitioner's land was proposed to acquire for the formation of main link road from the Salem-Bangalore NH7 main road for the use of the residence allottees of Kottagoundampatti Tamil Nadu Housing Board Colony. **Due to non availability of the main approach road from the above NH7 main road, the allottees and general public are suffering to reach the main road i.e., NH7.** Hence, in the interest of the general public the land under reference is essentially required to form the approach road. I submit that if the approach road is formed the existing residence allottees of the Colony will be benefited and also the 141 unsold houses can be sold out immediately. Hence, in the interest of the general public the land under reference to for the approach road is essentially required for the reasons*



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state above. Now, the petitioner filed W.A.No.4338/ 2019 against the judgement of W.P.No.4081 of 2007, dated 17.09.2019.”

18. The records pertaining to the Clauses were also produced before this us and it could be seen that Section 4(1) Notification which is impugned in this Writ Petition had been made only in the District Gazette. The respondent cannot hoodwink this Court by making such a false averments in the counter affidavit. However, we do not propose to initiate any action or contempt against the deponent of the affidavit. All we request the authorities to be fair in their approach and not act like private litigants in trying to make false statement to win their case. But, however, considering the fact, we direct the deponent to pay a cost of Rs.5,000/- (Rupees Five Thousand only) to the Legal Services Authority, Chennai for filing such a false affidavit. The same may be paid from and out of his own funds and not in his official capacity.

19. Since, we have found that the initiation of the land acquisition proceedings namely the Section 4(1) Notification had been made



contrary to the provisions of Section 4(1). The same would have to be quashed. The said Notification cannot be cured by the subsequent lawful acts by the authorities. In view of the law laid down by the Hon'ble Apex Court in the judgments referred to supra, we hold that the subsequent lawful Notification cannot cure the defect in the initial notification.

20. For such reasons, Section 4(1) Notification is quashed and the consequential proceedings namely Section 6 declaration and the Award passed are also declared as *non-est* proceedings.

21. In fine, these Writ Appeals are allowed and the impugned orders passed in these Writ Petitions, Section 4(1) Notification and the consequential Section 6 declaration are all set aside. However, it is always open to the respondents to initiate proper proceedings for acquisition of land of the appellants in the manner known to law. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

22. As directed above, the deponent of the counter affidavit



namely Mr.R.Madheswaran, working a Special Tahsildar (Land Acquisition), Neighbourhood Scheme, Ayyanthirumaligai Road, Salem – 636 008, shall pay the cost indicated above within a period of two (2) weeks from the date of receipt of a copy of this order and file a compliance report to this Court within a week thereafter.

23. Post the case “for reporting compliance” on 04.03.2024.

(R.S.K.,J.) (K.B., J.)
10.01.2024

Index: Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No

gba

To

17/19



1.Special Commissioner and Commissioner of
Land Administration,
Cheapauk, Chennai – 5.

2.District Collector, Salem District.

3.Special Tahsildar (Land Acquisition),
Neighbourhood Scheme, Tamil Nadu Housing Board,
Salem – 8.

R.SURESH KUMAR., J.
and



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K.KUMARESH BABU.,J.

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Represented by its Managing Director,
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Housing and Urban Development Department,
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