



W.A.(MD)Nos.367 & 368 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Judgment	Date of Pronouncing the Judgment
18.03.2024	.03.2024

CORAM:

**THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN
and
THE HONOURABLE MR.JUSTICE C.KUMARAPPAN**

**W.A.(MD)Nos.367 & 368 of 2024
and
C.M.P.(MD)Nos.3185, 3186, 3189 & 3191 of 2024**

W.A.(MD)No.367 of 2024:-

M.Abdul Kareem (Died)

- 1.Thajuma Beevi, W/o.M.Abdul Kareem
- 2.Asma Rani, D/o.M.Abdul Kareem
- 3.Ainul, D/o.M.Abdul Kareem

... Appellants

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



W.A.(MD)Nos.367 & 368 of 2024

Prayer : Writ Appeal filed under Clause 15 of the Letters of Patent, against the order dated 06.12.2022, made in W.P.(MD)No.21068 of 2016.

W.A.(MD)No.368 of 2024:-

Tamil Selvan, S/o.Ganapathy

... Appellant

vs.

1.The District Collector,
Ramanathapuram District.

2.The Tahsildar,
Ramanathapuram Taluk,
Ramanathapuram District.

3.The District Adi Dravidar and Welfare Officer,
Ramanathapuram.

4.The Special Tahsildar,
Adi Dravidar Welfare Department,
Ramanathapuram.

... Respondents

Prayer : Writ Appeal filed under Clause 15 of the Letters of Patent, against the order dated 06.12.2022, made in W.P.(MD)No.8809 of 2021.

For Appellants in both the W.As. : Mr.B.Saravanan
Senior Counsel
for Mr.RM.Arun Swaminathan

For Respondents in both the W.As.: Mr.J.K.Jayaseelan
Government Advocate



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COMMON JUDGMENT

DR.G.JAYACHANDRAN, J.
and
C.KUMARAPPAN, J.

These two intra-court appeals are against the common order, dated 06.12.2022, passed in W.P.(MD)Nos.21068 of 2016 and W.P.(MD)No.8809 of 2021.

2. W.P.(MD)No.21068 of 2016 was filed by one Abdul Kareem, the original owner of the land subjected to acquisition. Pending disposal of the Writ Petition, he died. Hence, his legal representatives came on record to continue the litigation.

3. W.P.(MD)No.8809 of 2021 was filed by one Tamilselvan, who purchased the land subsequent to acquisition passing of award.

Prelude:-

4. The subject matter in both the writ petitions are in respect of land acquisition proceedings initiated under the Tamil Nadu Acquisition of Land for



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Adi-dravidar Welfare Schemes Act, 1978 (Tamil Nadu Act 31 of 1978) [hereinafter referred to as "the Act"] by the Collector of Ramanathapuram District, pursuant to the Gazette Notification, dated 16.09.1998, under Section 4(1) of the Act. In this notification, the lands in Sakkarakottai Village, situated in S.No. 424-1A, 424-2A, 424-1B, 424-2B, 424-1C, 424-2C, 424-1D and 424-2D, measuring about 3.12.50 Hectares and the land in Sundarapandiapattinam Village, situated in Survey No.264-1A1B, measuring about 0.58.5 Hectare, which stood in the name of different persons were acquired. After giving opportunity to the title holders to participate in the enquiry proceedings, award was passed on 28.01.1999, vide proceedings of the Special Thasildar in Na.Ka.No.1387/97.

5. Mariam Aiyasha and Vajitha, who are the owners of the land in S.Nos.424-1A, 424/2A, 424/1B and 424/2B challenged the Gazette Notification, dated 16.09.1998, on the ground that they were not served with notice properly. Their Writ Petitions [W.P.Nos.9926 and 9927 of 1999] was disposed on 16.12.2006, with direction to verify whether the writ petitioners were served with notice as mandated under Section 4(1) of the Act. The respondent, on verification of records, found that notice regarding acquisition was duly served to one



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Basheer and on behalf of the title holders, he participated in the proceedings on behalf of them.

6. Alleging that this information was furnished to them only on 25.02.2010, the said Mariam Aiyasha and Vajitha filed W.P.(MD)No.3259 of 2010 for re-issue of Patta in their favour claiming that they are in possession of the property. That Writ Petition was allowed on 17.06.2014.

W.P.(MD)No.21068 of 2016:-

7. The Writ Petitioner Abdul Kareem claiming ownership in S.Nos.424/1C and 424/2C, initially filed W.P.(MD)No.5288 of 2008 challenging the proceedings of the Special Tahsildar, dated 28.01.1999 and prayed for issuance of a Writ in the nature of Certiorari to quash the award proceedings on the ground that he was not served with proper notice before final declaration. The learned Judge dismissed this Writ Petition on 19.11.2009 stating that, the petitioner without challenging the final declaration of the acquisition, had challenged the award after allowing the acquisition proceeding to reach it's logical conclusion.



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8. Thereafter, Abdul Kareem filed W.P.(MD)No.21068 of 2016 narrating the earlier dismissal of his Writ Petition and the subsequent development of allotting the land acquired to about 186 persons of Adi-dravidar Community and also their refusal to take the land. As a consequence, the Special Tahsildar (ADW), vide proposal dated 09.08.2016, ordered to cancel the Patta issued to those who are not willing to take the land and to re-issue Patta to other eligible Adi-dravidar people. Coming to know about this, he prayed for issuance of Writ of Certiorarified Mandamus, to quash the proceedings of the Special Tahsildar (ADW) dated 09.08.2016, and re-issue Patta in his name. The said Abdul Kareem died on 19.01.2020 and his legal heirs were impleaded as petitioners 2 to 4 in the said Writ Petition, vide order dated 10.12.2021, in W.M.P.(MD)No. 18127 of 2011.

9. After the Special Tahsildar (ADW), filed his counter, the legal heirs of the Writ Petitioner Abdul Kareem filed W.M.P.(MD)No.18054 of 2022 to amend the prayer to the effect that to call for the records relating to the final notification, dated 26.09.1998 and consequential award dated 01.02.1999 and quash the same.



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W.P.(MD)No. 8809 of 2021:-

10. Tamilselvan claiming ownership of S.Nos.424/1D and 424/2D through a sale deed dated 22.07.2002 from one Seenivarusai, S/o.Ibrahim, has filed this Writ Petition. He also, similar to Abdul Kareem. He initially sought for quashing of the Special Tahsildar's proceedings, dated 09.08.2016 and for issuance of Patta in his name. Later, amended his prayer to quash the acquisition of final Notification, dated 26.09.1998 and the consequential award proceedings dated 01.02.1999.

11. A common order in these two Writ Petitions was passed on 06.12.2022. The parties filed Review Applications (MD) Nos.37, 38 and 56 of 2023. Those Review Applications were dismissed on 23.06.2023. Thereafter, the present W.A. (MD)No.367 of 2024 and W.A.(MD)No.368 of 2024 are filed against the common order dated 06.12.2022, in W.P.(MD)No.21068 of 2016 and W.P.(MD) No.8809 of 2021, respectively.

12. The learned Judge, in his order, impugned in W.A.(MD)No.367 of 2024, had noted that the writ petitioner in W.P.(MD)No.21068 of 2016 [Abdul Kareem] already challenged the award proceedings in W.P.(MD)No.5288 of 2008



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and same was dismissed on 19.11.2008. That order of the learned Judge not challenged, and same has attained finality. Therefore, the second Writ Petition, challenging the notification and consequential award is not maintainable.

13. As far as W.P.(MD)No.8809 of 2021 filed by Tamilselvan, the learned Judge dismissed it stating that the acquisition of the year 1998 culminated in the year 1999 on passing award. The same is challenged in the year 2021, after he purchased the property in the year 2002 long after the passing of award in the acquisition.

14. The plea of the petitioners in both the Writs that, they are in possession of the property not found in their favour, since no revenue records produced by them to prove their possession.

Appellants' submission:-

15. The learned Senior Counsel for the appellants contended that when the initial notification was not issued in accordance with law, the foundation goes and the edifice should fall automatically. The constitutional right of the writ



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petitioners cannot be deprived on the ground of laches or on the principal of *res judicata*. According to the learned Senior Counsel for the appellants, the lands are still in the possession of the appellants.

16. In the Writ Petition filed by other land owner namely, Mariam Aiyasha and Vajitha [W.P.(MD)No.3259 of 2010], the notification was quashed. This order is judgment *in rem*. It is applicable to the other land owners also, who are similarly placed. Hence, the dismissal of the earlier Writ Petition will not act as *res judicata* to agitate the constitutional right of property.

Submission of the State:-

17. The learned Government Advocate representing the respondents submitted that the appellants had come to this Court with unclean hands. In their Writ Petitions, they initially sought for re-issue of Patta, accepting the acquisition. Later, they got the prayer for amendment, which is absolutely beyond the scope of the main Writ Petition and the prayer. Once admitting the validity of the acquisition and prayed for re-issue of Patta in their name, they are restrained to challenge the notification on the principle of acquiescence and waiver. That



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apart, though initially some of the beneficiaries of the Scheme, who belong to Adi-dravidar Community were not ready to take the land, later, the Pattas were issued to other eligible persons, who were willing to use the land.

18. After fully knowing about these facts, by amending the relief, the final notification and the award, which has reached finality at least 23 years prior to amendment petitions, is sought to be agitated vexatiously. The land acquired for the distribution to the Adi-dravidar people been done and they are now occupying the land by putting huts. Those downtrodden people cannot be unsettled for the sake of the writ petitioners, who had approached this Court belatedly and with unclean hands.

Findings of this Court:-

19. Heard the learned counsels appearing on either side. Records of the earlier Writ Petitions and the relief sought, as well as the present Writ Petitions and relief sought perused. On scrutiny of the documents, this Court is of a firm view that the submission made by the learned Government Advocate is wholly sustainable. The appellants been waging and pushing a vexatious litigation. As

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far as Abdul Kareem and his legal heirs, who are the appellants in W.A.(MD)No. 367 of 2024, the learned Judge of this Court as early as 19.11.2009 in Writ Petition in W.P.(MD)No.5288 of 2008 had observed that Abdul Kareem has challenged the award and not the Notification. While so, after filing the subsequent Writ for re-issue of Patta in his favour, he by way of amendment to his prayer after 13 years from the date of the order passed in W.P.(MD)No.5288 of 2008 had challenged the notification and the consequential award. The learned Judge had noted that while his earlier Writ Petition challenging the award got dismissed, indirectly, it cannot be done by filing a Writ Petition for one relief and later, amending it to another relief and include the relief, which was already declined. When the writ petitioner again agitated this point in the Review Application contending that, the earlier order passed in W.P.(MD)No.5288 of 2008 is *per incuriam*, the learned Judge had observed, expression '*per incuriam*' is connected to law of precedent. Whereas, in the instant cases, it is the principle of *res judicata* applies.



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20. The learned Senior Counsel for the appellants argued that, the order passed in the Writ Petition filed by other land owners namely, Mariam Aiyasha and Vajitha [W.P.(MD)No.3259 of 2010], the Notification was quashed. This order is judgment *in rem*. Hence, the principle of *res judicata* will not apply.

21. This Court unable to countenance the said argument. Absolute misunderstanding of the legal principle had led to this argument. From the perusal of the order passed in W.P.(MD)No.3259 of 2010, we find that this Court was satisfied that notice to the land owner not served as per the mandate of Section 4(1) of the Act. Therefore, the acquisition proceeding to the extent of the writ petitioners' land alone was quashed. It is a judgment *in personam* and not a judgment *in rem* as argued by the learned Senior Counsel for the appellants.

22. We cannot afford to ignore the fact that the acquisition of the land was for the Welfare of Adi-dravidar people and the purpose of acquisition has completed long ago. The learned Judge in the main Writ Petitions as well the Review Petitions filed thereafter, for reasons mentioned, had held, the appellants



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are not entitled for the relief sought for. In the given factual matrix, there can be no other legal view is possible.

23. As far as W.A.(MD)No.368 of 2024 filed by Tamilselvan, his case is still worst. He is not the owner of the land at the time of the Notification or Award. He claims to have purchased the land in the year 2002. On the date of this sale, the land had already been vested with the Government and award amount been deposited for the owners to receive it. In fact, the vendor of the Writ Petitioner had no title on the day, the appellant alleged to have purchased the land. He has no *locus* to challenge the notification or award. However, citing the sale deed, he had first filed the Writ Petition, seeking issuance of Patta in his name, later amended the prayer to question the notification and award.

24. We also note that one of the Review Applications namely, Rev.APl.Writ (MD)No.56 of 2023 was filed by Seenivarusai Bin M Zakaria and it was dismissed along with the other Review Applications filed by these appellants.



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Conclusion:-

25. By filing these vexatious Writ Appeals, the appellants had attempted to deprive the right of downtrodden, who had been allotted the land acquired as per law. Even assuming that there was some infraction in the procedure, the same need not be probed after lapse of more than two decades. Courts will come to rescue only for persons, who are vigilant and not who slept over his right. The intention of the appellants to re-open the issue afresh belatedly after knowing third party interest is highly deprecated and to be curtailed by imposing costs.

Result:-

26. As a result, the Writ Appeals are dismissed with costs of Rs.50,000/- (each appeals), payable to the Tamil Nadu Chief Minister Relief Fund, within a period of four weeks from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petitions are closed.

Index : Yes
NCC : Yes
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[G.J., J.] & [C.K., J.]
28.03.2024



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To

- 1.The District Collector,
Collectorate Complex,
Ramanathapuram District.
- 2.The District Adi Dravidar and Welfare Officer,
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- 3.The Special Tahsildar,
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DR.G.JAYACHANDRAN, J.
and
C.KUMARAPPAN, J.

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PRE-DELIVERY COMMON JUDGMENT MADE IN
W.A.(MD)Nos.367 & 368 of 2024

28.03.2024