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WP.No.29765 of 2024

In the High Court of Judicature at Madras

Reserved on : 25.2.2025	Delivered on : 03.3.2025
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Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

Writ Petition No.29765 of 2024 &
WMP.Nos.32445, 32446, 32449 & 39093 of 2024

Premier Leather Corporation,
rep.by its Proprietors

- 1.Dr.S.Jagathrakshagan
- 2.Dr.J.Sreenisha
- 3.Dr.J.J.Sundeeep Anand

...Petitioners

Vs

- 1.State of Tamill Nadu, rep.by
its Secretary to Government,
Housing & Urban Development
Department, Fort St.George,
Chennai-105.

- 2.The Commissioner of Land
Administration, Revenue &
Disaster Management
Department, Chepakkam,
Chennai.

- 3.The District Collector,
Chengelpet District,
District Collector Office,
Chengelpet.



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4.The Chennai Metropolitan
Development Authority,
Thalamuthu Natarajan
Building, No.1, Gandhi
Irwin Road, Egmore,
Chennai-8 rep.by its
Member Secretary

(R4 impleaded as per order
dated 12.11.2024 in WMP.No.
3037 of 2024 by PTAJ)

...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records relating to the Notification in proceedings in R.C.No.3989/2023/B1 dated 06.1.2024 on the file of the third respondent culminating in proceedings bearing reference No.Rc.3989/2023/B1,No.VI(1)/459/2024 dated 17.6.2024 issued by the third respondent and quash the same.

For Petitioner : Mr.Abudu Kumar Rajaratnam, SC
for Mr.T.Sathiyamoorthy

For Respondents : Mr.P.S.Raman, AG
assisted by both
Mr.A.Selvendran, SGP for R1 to R3 &
Mr.R.Sivakumar for R4



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ORDER

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This writ petition has been filed challenging the Notification in proceedings in R.C.No.3989/2023/B1 dated 22.1.2024 on the file of the third respondent - District Collector culminating in proceedings bearing reference No.Rc.3989/2023/B1, No.VI(1)/459/2024 dated 17.6.2024 issued by the third respondent.

2. Heard the learned Senior Counsel appearing on behalf of the petitioners and the learned Advocate General appearing on behalf of respondents, assisted by both the learned Special Government Pleader appearing for respondents 1 to 3 as well as the Standing Counsel appearing for the fourth respondent.

3. The facts leading to filing of this case are as follows :

(i) The petitioners are the owners of the properties in S.Nos. 157B/1A and 158A/1A1, Kilambakkam Village, Vandalur Taluk, Chengelpet District. An extent of 5 cents in S.No.158/A was acquired for expansion of Grand Southern Trunk Road. After subdividing the acquired land, the remaining extent was assigned S.Nos.157B/1A and 158A/1A1.



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(ii) The third respondent issued a Notification under Section 11(1) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short, the Act) stating that the land measuring an extent of 59 Ares in S.No. 158A/1A1 is required for construction of a sky walk connecting the proposed Kilambakkam Suburban Railway Station with Kilambakkam Bus Terminus. Objections were invited from the persons interested. The said Notification was published in the Times of India newspaper on 14.1.2024 and in the Chengelpet District Gazette on 03.2.2024. Even before the expiry of 60 days, the third respondent fixed the date for hearing the objections i.e. on 23.3.2024. On account of the same, the petitioners were not not able to collect the entire details of the measurements and the nature of construction to be carried out in the subject property.

(iii) The petitioners' lands are measuring 37.4 meters north to south and 156 meters east to west and the entire extent may not be required even if a sky walk is to be erected since only pillars are going to be raised to the height of 30 to 40 feet above the land. When the inquiry was fixed by the third respondent on 23.3.2024, the representative of the petitioners attended the hearing and submitted



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their objections.

(iv) The grievance of the petitioners is that the third respondent, who has to hear the objections and submit a report on the objections to the appropriate Government, rendered a decision on the objections without submitting a report to the State Government. Subsequently, the third respondent issued a Declaration under Section 19(2) of the Act on 17.6.2024 stating that the lands are required for a public purpose. Aggrieved by that, the above writ petition has been filed before this Court.

4. When the matter came up for admission on 04.10.2024, this Court granted an order of status quo, which is extended subsequently from time to time. Pursuant to that, the third respondent filed a counter affidavit for himself and on behalf of respondents 1 and 2. The fourth respondent filed a miscellaneous petition in WMP.No.39093 of 2024 seeking to vacate the interim order granted by this Court on 04.10.2024.

5. In the affidavit filed in support of WMP.No.39093 of 2024, the fourth respondent stated that he adopted the counter affidavit filed by



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respondents 1 to 3. Apart from that, the fourth respondent has stated as follows :

(i) A feasibility study was made for integrating the Kilambakkam railway station with the bus terminus by the Chennai Unified Metropolitan Transport Authority (CUMTA). The suggestions made by the CUMTA were approved by the first respondent and thereafter, a joint inspection was conducted and a decision was taken to acquire the vacant lands in S.Nos.157/B/1A, 158/1A1 and 151A/1A1, Kilambakkam Village. Later, considering the cost factor, it was also decided to acquire the bare minimum land, which is absolutely required for the project. Accordingly, it was finally decided to acquire the land in S.No.158A/1A1 to erect the sky walk.

(ii) It was also decided to utilize the acquired land for other structures and facilities. This decision had to be taken in order to reduce the pressure on the GST Road by connecting the railway station with the Kilambakkam bus terminus. In line with that, the procedure was properly followed and after considering the objections, the Notification was issued. Subsequently, the award proceedings were initiated, in which, the representative of the petitioners also attended and the final award as passed on 27.9.2024. Accordingly, the fourth



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respondent has sought for dismissal of this writ petition.
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6. Before this Court, Mr.Abudu Kumar Rajarathnam, learned Senior Counsel appearing on behalf of the petitioners, made the following submissions :

(a) Section 11(1) of the Act stipulates that the appropriate Government alone shall publish the preliminary Notification in the official Gazette, which would mean that it has to be published in the Tamil Nadu Government Gazette whereas the Notification was published only in the Chengelpet District Gazette on 03.2.2024. Therefore, the preliminary Notification itself is unsustainable in law. To substantiate this submission, he relied upon the judgment of the Division Bench of the Madurai Bench of this Court in the case of ***Thirumani Dharmaraj Vs. State of Tamil Nadu, rep.by its Secretary, Public Works Department [reported in 2023 SCC OnLine Madras 3772]***.

(b) As per Section 15 of the Act, the objections must be made to the Collector in writing under Sub-Section (2) and the Collector must hear the aggrieved person and after hearing the objections and after making such further inquiry, he must send his recommendations



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on the objections to the appropriate Government together with the record of proceedings held by him along with a separate report. Thereafter, the appropriate Government should take a decision under Section 15(3) of the Act. In the instant case, the Collector has adorned the role of hearing the objections and also taking the final decision and hence, the same is opposed to Section 15 of the Act. To substantiate this submission, he relied upon the judgment of the Hon'ble Supreme Court in the case of ***Hindustan Petroleum Corporation Limited Vs. Darius Shapur Chenai [reported in 2005 (7) SCC 627]***.

(c) Where the preliminary Notification itself is bad, all the proceedings made subsequent thereto must also fall to the ground. To substantiate this submission, he relied upon the judgment of the Hon'ble Supreme Court in the case of ***State of Punjab Vs. Davinder Pal Singh Bhullar [reported in AIR 2012 SC 364]***.

(d) The final Declaration under Section 19(1) of the Act has to be made under the hand and seal of the Secretary to Government whereas the final Declaration has been made by the District Collector. There is no material to show that the same has been issued under the hand and seal of the Secretary to Government as contemplated under Section 3(e) of the Act.



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7. Per contra, the learned Advocate General appearing on behalf of the respondents submitted as follows :

(a) The writ petition itself cannot be maintained after passing of the award and admittedly, in this case, the writ petition was filed only after the award was passed on 27.9.2024. To substantiate this submission, he relied upon the following :

(1) judgment of the Hon'ble Supreme Court in the case of ***The Municipal Council, Ahmednagar Vs. Shah Hyder Beig*** [reported in 2000 (2) SCC 48];

(2) judgment of a Division Bench of this Court in the case of ***Executive Engineer & Others Vs. Girija Janarthanan & Others*** [reported in 2009 (2) MLJ 918];

(3) judgment of another Division Bench of this Court in the case of ***P.Sundar & Others Vs. The Special Tahsildar, Adi Dravidar Welfare, Sriperumbudur Taluk at Ambattur, Tiruvallur District*** [reported in MANU/TN/0366/2012];

(4) judgment of the Hon'ble Supreme Court in the case of ***Land & Building Department through Secretary & another Vs. Attro Devi & Others*** [reported in 2023



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(5) judgment of the Hon'ble Supreme Court in the case of ***Delhi Development Authority Vs. Damini Wadhwa [Civil Appeal No.7962 of 2022 dated 04.11.2022].***

(b) The District Collector is deemed to be the appropriate Government in relation to acquisition of land where the extent is less than 600 hectares (1,500 acres) by virtue of G.O.Ms.No.526 Revenue & Disaster Management, Land Administration Wing, LA-I(1) Section dated 26.9.2020. In view of the same, the District Collector can act in his capacity as the Collector under Section 15(2) of the Act for considering the objections and thereby he can consider the objections and take a decision under Section 15(3) of the Act in his capacity as the appropriate Government. Hence, the District Collector has perfectly exercised his functions in accordance with Section 15 of the Act and there is no reason to interfere with the same.

(c) The provisions under the Land Acquisition Act, 1894, which specifically enumerated for a hierarchy of hearing and deciding the objections, do not exist in the Act and the Parliament was aware of the fact that the District Collector can exercise his powers under Sub-



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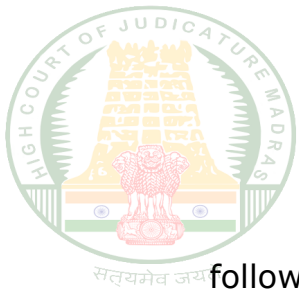
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Sections (2) and (3) of Section 15 of the Act.

(d) Even though it was contended on behalf of the petitioners that the Collector has not applied his mind as to the extent of the land that is necessary for constructing the sky walk, the decision was taken by the CUMTA to utilize the entire land and such a stand taken is also explained in the affidavit filed in support of the vacate status quo petition.

8. In reply to the preliminary objection raised by the learned Advocate General on the maintainability of the writ petition, the learned Senior Counsel appearing on behalf of the petitioners submitted that there is no absolute bar for entertaining a writ petition under Article 226 of The Constitution of India challenging the acquisition proceedings after the award is passed. According to him, what is barred is to knock the doors of the Court after a long lapse of time whereas in the instant case, the award was passed on 27.9.2024 and the writ petition has been filed on 30.9.2024.

9. To substantiate the said submission, the learned Senior Counsel appearing on behalf of the petitioners relied upon the



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following :
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(1) judgment of the Hon'ble Supreme Court in the case of **Indore Development Authority Vs. Manoharlal** [reported in **2020 (8) SCC 129**];

(2) judgment of the First Bench of this Court in the case of **Albert Emmanuel Vs. Union of India rep.by its Secretary, Ministry of Shipping Road Transport & Highways, New Delhi** [reported in **2024 (6) CTC 38**];

(3) judgment of the Hon'ble Supreme Court in the case of **Patasi Devi Vs. State of Haryana** [reported in **2012 (9) SCC 503**];

(4) judgment of the Hon'ble Supreme Court in the case of **Vyalikaval House Building Cooperative Society by its Secretary Vs. V.Chandrappa & Others** [reported in **2007 (9) SCC 304**]; and

(5) judgment of the Hon'ble Supreme Court in the case of **Devinder Singh & Others Vs. State of Punjab** [reported in **2008 (1) SCC 728**].



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10. This Court has carefully considered the submissions of the learned counsel on either side and perused the materials available on record and more particularly the impugned orders.

11. This Court will first go into the preliminary objection raised by the learned Advocate General on the maintainability of this writ petition after passing the award.

12. After going through the judgments cited on either side, it is seen that there is no total bar in entertaining a writ petition under Article 226 of The Constitution of India after the passing of the award. The Hon'ble Supreme Court as well as this Court have consistently held that acquisition proceedings should not be allowed to be challenged after a long lapse of time subsequent to passing of the award. However, there are exceptional cases where such a writ petition can be entertained and one such case is where the very Notification that is issued is questioned on the ground of lack of power and jurisdiction.

13. This Court must keep in mind the fact that right to property



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is a fundamental right guaranteed under Article 300-A of The Constitution of India and that no person can be deprived of his property save by the authority of law. This Article embodies the doctrine of eminent domain, which comprises of (a) taking possession of the property in the public interest; and (b) payment of reasonable compensation. It has been repeatedly held that the acquisition proceedings initiated under the Land Acquisition Act, 1894 are in the nature of expropriation of the property from its owner for public use or benefit. Therefore, strict compliance with the procedure is mandatory in order to sustain such acquisition.

14. If ultimately a Court finds that the minimum mandatory procedure that is prescribed under the Statute has not been fulfilled, it will have a bearing on all the subsequent events that took place. In other words, if the initial action is not in consonance with law, all the subsequent and consequential proceedings would fall through since illegality strikes at the root of the proceedings.

15. This Court is redolent with the Latin maxim '**sublato fundamento cadit opus**', which means that foundation being



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removed, structure/work falls. This fundamental principle gains significance in the case in hand considering the nature of ground that has been raised questioning the very preliminary Notification issued by the third respondent. Even otherwise, the writ petition has been filed within 3 days after the award was passed and there was no delay in questioning the acquisition proceedings. Therefore, this Court holds that this writ petition cannot be thrown out on the ground of maintainability just because the award came to be passed a couple of days before filing of the writ petition.

16. In the case in hand, there is no dispute with regard to the fact that the third respondent called for the objections under Section 15(2) of the Act and had taken a decision in his capacity as the appropriate Government under Section 15(3) of the Act.

17. On carefully reading Section 15(2) of the Act, it is seen that the word that is used is 'Collector'. The term '**Collector**' has been defined under Section 3(g) of the Act, which reads as follows :

"Collector" means the Collector of a revenue district, and includes a Deputy Commissioner and any officer specially designated by the appropriate



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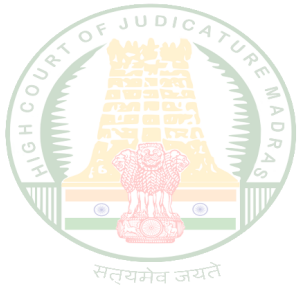
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Government to perform the functions of a Collector under this Act."

18. A careful reading of the above definition would show that a Collector need not necessarily be the District Collector for the purpose of Section 15(2) of the Act and he can even be a Deputy Commissioner or any officer specially designated by the appropriate Government to perform the functions of a Collector. Hence, he can even be a Revenue Divisional Officer or a District Revenue Officer exercising the functions under Section 15(2) of the Act, if they are designated by the appropriate Government to perform the functions of the Collector.

19. Section 15(3) of the Act mandates the decision to be taken by the appropriate Government on the objections made under Sub-Section (2). The term '**appropriate Government**' has been defined under Section 3(e) of the Act and for the case in hand, Clause (v) will be relevant, which is extracted as hereunder :

"(v) in relation to the acquisition of land for the purpose of the Union as may be specified by notification, the Central Government:



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Provided that in respect of a public purpose in a District for an area not exceeding such as may be notified by the appropriate Government, the Collector of such District shall be deemed to be the appropriate Government."

20. On carefully reading the above definition, it is quite apparent that the appropriate Government can notify that a Collector of a district can be designated as the appropriate Government to perform the functions of the appropriate Government. Thus, under Section 15(3) of the Act, the District Collector can be designated as the appropriate Government. The same has been done under G.O.Ms.No. 526 dated 26.9.2020 and the District Collector has been designated as the appropriate Government for the area less than 600 hectares (1,500 acres).

21. The term '**Collector**' specified under Sub-Sections (2) and (3) of Section 15 of the Act has a marked difference. Under Section 15(2) of the Act, he need not necessarily be the District Collector to receive the objections and send the recommendations and he can even be any officer specially designated by the appropriate Government to



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perform the functions of the Collector. In such a case, as already held by this Court, a Revenue Divisional Officer or a District Revenue Officer can perform this function. When it comes to notifying a District Collector as the appropriate Government, such designation cannot be given to any officer other than the District Collector. The above difference in the term '**Collector**' gains a lot of significance when a District Collector exercises his powers under Sub-Sections (2) and (3) of Section 15 of the Act.

22. It must be kept in mind that the act of calling for objections, hearing and considering the same is not an empty formality. It requires application of mind and the Authority is expected to deal with the objections raised while submitting the recommendations on the objections as a separate report to the appropriate Government. If the same District Collector is to consider such recommendations on the objections, the decision that is taken under Section 15(3) of the Act becomes an empty formality. It would literally mean that the District Collector will consider the objections and make his recommendations by way of a report on such objections and submit them to himself and take a final decision under Section 15(3) of the Act.



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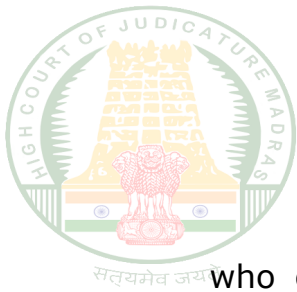


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23. The provision is so designed that the person, who considers the objections and makes the recommendations, should be different from the person/authority, who takes the final decision. If it is the same person, who will perform both the functions, it militates against the very scheme of Section 15 of the Act. One of the important rights that has been given to the land owners is Section 15 of the Act and once it crosses Section 15(3) of the Act, the decision will become final and thereby the land owner virtually loses a valuable right.

24. There is no bar in the appropriate Government designating the District Collector as the appropriate Government for the purposes of Sub-Section (3) of Section 15 of the Act. However, if such designation is made, the same District Collector should not hear the objections under Section 15(2) of the Act and make the recommendations. In such cases, the powers of the District Collector will have to be assigned/designated to any other officer to perform the functions of the Collector under the Act. That is the reason as to why this Court was harping upon the difference in the terminology used under Sub-Sections (2) and (3) of Section 15 of the Act wherein Sub-Section (2) uses the term '**Collector**' and it is only a District Collector,



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who can be designated as the appropriate Government under Sub-Section (3) read with Section 3(e)(v) of the Act.

25. In the light of the above discussions, this Court holds that the objections raised by the learned Senior Counsel appearing on behalf of the petitioners in the District Collector adorning the position of hearing the objections and also taking the final decision have a lot of force and in a case where a District Collector has been designated as the appropriate Government, he cannot act as the Collector, who will hear the objections and make the recommendations under Section 15(2) of the Act.

26. The scheme of Section 15 of the Act was dealt with by the Hon'ble Supreme Court in the case of ***Shiv Singh & Others Vs. State of Himachal Pradesh [reported in 2018 (16) SCC 270]***. Subsequently, the Hon'ble Apex Court in the case of ***Dinesh & Others Vs. State of Madhya Pradesh & Others [S.L.P.(Civil) Nos.28410 to 28414 of 2023] dated 15.5.2024***, held as follows :

"15. By referring to this power of delegation provided under Section 3(g), the respondents have tried to urge that the Collector being the



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appropriate Government forwarded the objections under Section 15 of the Act to the SDO vide order dated 2nd December, 2022 for exercising the delegated powers and to personally hear and decide the said objections and thereafter to submit his report. The SDO, in compliance of the said order heard the objections and prepared the report dated 27th February, 2023. It was thus contended that the impugned orders do not suffer from any jurisdictional error.

16. We are afraid that the said interpretation which is sought to be given by the respondents is ex facie misplaced and misconceived. The provisions contained in Section 15 of the Act of 2013 are analogous to Section 5-A of the Land Acquisition Act, 1894. This Court has interpreted Section 5A of the Land Acquisition Act, 1894 in a catena of decisions. In the case of Om Prakash and another Vs. State of U.P. and Others [1998 (6) SCC 10], it was held as follows:

'21.Thus, according to the aforesaid decision of this Court, inquiry under Section 5-A is not merely statutory but also has a flavour of fundamental rights under Articles 14 and 19 of the Constitution though right to property has now no longer remained a fundamental right, at least observation regarding Article 14, vis-à-vis, Section 5A of the Land Acquisition Act would remain apposite.'



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17. *In the case of Union of India and Others Vs. Mukesh Hans [2004 (8) SCC 14], it was observed:*

"35. At this stage, it is relevant to notice that the limited right given to an owner/person interested under Section 5A of the Act to object to the acquisition proceedings is not an empty formality and is a substantive right, which can be taken away for good and valid reason and within the limitations prescribed under Section 17(4) of the Act. The object and importance of Section 5-A inquiry was noticed by this Court in the case of Munshi Singh Vs. Union of India [(1973) 2 SCC 337] wherein this Court held thus :

'7. Section 5-A embodies a very just and wholesome principle that a person whose property is being or is intended to be acquired should have a proper and reasonable opportunity of persuading the authorities concerned that acquisition of the property belonging to that person should not be made. ... The legislature has, therefore, made complete provisions for the persons interested to file objections against the proposed acquisition and for the disposal of their objections. It is only in cases of urgency that special powers have been conferred on the appropriate Government to dispense with the provisions of Section 5-A':"

18. *In the case of Hindustan Petroleum*



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Corporation Limited Vs. Darius Shapur Chennai [2005 (7) SCC 627], this Court has held the right to make objections under Section 5-A to be akin to a fundamental right. The relevant paras are extracted hereinbelow: -

"6. It is not in dispute that Section 5A of the Act confers a valuable right in favour of a person whose lands are sought to be acquired.....

9.It is also not in dispute that Section 5A of the Act confers a valuable important right and having regard to the provisions contained in Article 300-A of the Constitution it has been held to be akin to a fundamental right.

15. Section 5A of the Act is in two parts. Upon receipt of objections, the Collector is required to make such further enquiry as he may think necessary whereupon he must submit a report to the appropriate Government in respect of the land which is the subject-matter of notification under Section 4(1) of the Act. The said report would also contain recommendations on the objections filed by the owner of the land. He is required to forward the records of the proceedings held by him together with the report. On receipt of such a report together with the records of the case, the Government is to render a decision thereupon. It is now well settled in view of a catena of decisions that the declaration made under Section 6 of the Act need not contain any reason. (See Kalumiya



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Karimmiya Vs. State of Gujaraat [(1977) 1 SCC 715] and Delhi Administration Vs. Gurdip Singh Uban [(2000) 7 SCC 296]].

29. The Act an expropriatory legislation. This Court in State of M.P. Vs. Vishnu Prasad Sharma [(1966) 3 SCR 557] observed that in such a case the provisions of the statute should be strictly construed as it deprives a person of his land without consent. [See also Khub Chand Vs. State of Rajasthan [(1967) 1 SCR 120] and CCE Vs. Orient Fabrics (P) Ltd. [(2004) 1 SCC 597]]."

19. This Court has interpreted Section 15(2) of the Act of 2013 in the case of Shiv Singh & Others Vs. State of Himachal Pradesh & Others [reported in 2018 (16) SCC 270], wherein it was held as under:-

'6. Under the scheme of the Act, once the objections are filed by the affected landowners, the same are required to be decided by the Collector under Section 15(2) of the Act after affording an opportunity of being heard to the landowners, who submitted their objections and after making further inquiry, as the Collector may think necessary, he is required to submit his report to the appropriate Government for appropriate action in the acquisition in question.

7. In this case, we find that the Collector neither gave any opportunity to the appellants as



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contemplated under Section 15(2) of the Act and nor submitted any report as provided under Section 15(2) of the Act to the Government so as to enable the Government to take appropriate decision. In other words, we find that there is non-compliance of Section 15(2) of the Act by the Collector. In our view, it is mandatory on the part of the Collector to comply with the procedure prescribed under Section 15(2) of the Act so as to make the acquisition proceedings legal and in conformity with the provisions of the Act.” (emphasis supplied)

20. The Collector would be deemed to be the “appropriate Government” under the proviso to Section 3(e) of the Act of 2013 only when a land acquisition notification is issued by the appropriate Government that is the State Government indicating the limits of the area to be acquired for a public purpose and appointing the Collector as the authority empowered to acquire that particular area of land ‘in the district’ over which the officer holds jurisdiction. Hence, this proviso requires notification by the State Government of a particular area within the district to be acquired for public purpose and only for such limited area, the Collector would be authorised by deeming fiction to act as the appropriate Government.

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27. Furthermore, on discussion made above, the land acquisition notification dated 27th May, 2022 was issued by the State Government. Hence, neither the District Collector could act as the appropriate Government in regard to the acquisition in question nor was he authorised to delegate the powers to the SDO. As a matter of fact, considering the scheme of the Act of 2013 and the law as laid down by this Court in the case of Shiv Singh (supra), the District Collector was simply required to hold inquiry on the objections filed under Section 15(2) of the Act and thereafter, to forward the record of proceedings along with his opinion to the State Government for its decision. The State Government is mandated to take a decision on the objections as per Section 15(3) of the Act. However, these mandatory requirements of the statute were not followed in the case, and hence, the proceedings are hit by non-compliance of Sections 15(2) and 15(3) of the Act of 2013.

28. Even if, for the sake of arguments, the SDO is treated to be an officer authorised to hear the objections made under Section 15(2) of the Act, apparently, the final decision on such objections would have to be taken by the appropriate Government as per Section 15(3) of the Act which is lacking in this case.

29. The High Court while dismissing the batch of writ petitions filed by the land owners



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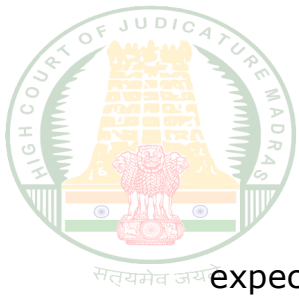


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including the appellant treated the same as having rendered infructuous observing that the final award had already been passed on 3rd October, 2023. It is not in dispute that the writ petitions came to be filed on 11th September, 2023 and thus the mere fact that the final award had been issued during pendency of the petitions would not save the acquisition proceedings because the hearing of the objections is a sacrosanct act treated akin to a fundamental right as held in the case of Hindustan Petroleum Corporation Limited (supra). Thus, the non-compliance of this mandatory requirement would vitiate the acquisition."

27. It is quite clear from the above extracted judgment that Section 15 of the Act is analogous to Section 5A of the Land Acquisition Act, 1894 and that therefore, such a right of objections or right to make objections has been held to be a fundamental right by relying upon the judgment of the Hon'ble Supreme Court in the case of ***Hindustan Petroleum Corporation Limited.***

28. It was further contended on behalf of the petitioners that the Collector, who hears the objections and holds an inquiry, is only



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expected to forward the record of proceedings along with his opinion to the appropriate Government and thereafter, the appropriate Government must apply its mind and take the final decision. If this procedure is not followed, it was categorically held that the mandatory requirements are not satisfied. In fact, in the judgment of the Hon'ble Apex Court in the case of **Dinesh**, even when the writ petitions were pending, the final award was passed and in spite of the same, the Hon'ble Apex Court held that passing of such final award will not save the acquisition proceedings since hearing of objections is a sacrosanct act treated akin to a fundamental right and it will vitiate the entire acquisition proceedings.

29. The other issue that has to be gone into in the instant case is that the preliminary Notification was not published in the Tamil Nadu Government Gazette, but was admittedly published in the Chengelpet District Gazette.



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30. This issue was dealt with by the Division Bench of the Madurai Bench of this Court in the case of ***Thirumani Dharmaraj***.

31. The learned Advocate General appearing on behalf of the respondents submitted that this judgment of the Division Bench of the Madurai Bench of this Court must be considered to be per incuriam since the said judgment was rendered on the premise that the term '***appropriate Government***' has not been defined under the Act.

32. It is true that such an observation has been made in paragraph 7 of the judgment in the case of ***Thirumani Dharmaraj***. However, on going through the entire judgment carefully, this Court finds that the Division Bench of the Madurai Bench of this Court has taken note of Section 3(e) of the Act. The relevant portions are extracted as hereunder :

"12. A reading of Section 3(e) of the 2013 Act, would show that appropriate Government has been defined to be the State Government and the proviso enacts a deeming provision enabling the District Collector deemed to be the appropriate Government in respect of lands not exceeding certain extent that is to be prescribed. That by



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itself in our considered opinion will not enable the District Collector to publish notification under Section 11 of the 2013 Act in the District Gazette. The legislation is very carefully drafted. It only incorporates a deeming proviso.

13. At the risk of repetition, the proviso to Section 3(e) of the 2013 Act, is extracted hereunder:

"Provided that in respect of a public purpose in a District for an area not exceeding such as may be notified by the appropriate Government, the Collector of such District shall be deemed to be the appropriate Government;"

14. The proviso enables the appropriate Government/State Government to notify the maximum extent of land up to which the District Collector could be empowered to issue a notification and in such cases, the District Collector would be deemed to be the appropriate Government. If the State Government notifies an extent of land as infinite, the District Collector would be able to issue a notification in respect of any extent of land and he would be the appropriate Government and such notification would be published in the District Gazette. If we look at the intendment of the legislation, the object sought to be achieved by authorizing the District Collector to issue notification in respect of a certain extent of land and deeming him as "appropriate



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Government” in respect of that extent of land, is only for the purposes of convenience and not to alter the requirements of Section 11 of the 2013 Act. The Parliament must be deemed to be aware of the effect of usage of the term “Official Gazette” in Section 11 of the 2013 Act. The fact that the term “Official Gazette” was intended to be the Fort St. George Gazette, is clear from Rule 13(3) of the Rules framed by the State Government. The very Rule 13(3), clearly prescribes that preliminary notification should be published in the Tamil Nadu Government Gazette. Even if “Official Gazette” could be construed including the District Gazette, the term “Tamil Nadu Government Gazette” at no stretch of imagination would include Tuticorin District Gazette. Therefore, the intendment of the Parliament as well as the Legislature is that publication of the notification under Section 11 of the 2013 Act should be made in the State Gazette and not the District Gazette.

15. Though a reference is made to Rule 13(3) of the Rules framed by the State, we do not find any discussion by the Writ Court with reference to Rule 13. The Writ Court has chosen to refer to certain judgments rendered under the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980. Section 7 of the said Act, deals with the publication of the orders of the District Magistrate made under



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the provisions of the Act and the right involved in those cases is not a constitutional right. When we are dealing with the legislation which provides for acquisition of land subject to payment of compensation which has the effect of limiting a constitutional right assured under Article 300(A) of the Constitution of India, the Court will have to essentially require the strict compliance with the procedure contemplated under the Act. Condonation of any deviation therefrom would infringe a right guaranteed by the Constitution of India. We are unable to subscribe to the views of the Andhra Pradesh High Court in W.P.No.7308 of 1984 dated 20.04.1984 (B.Gopal Reddy vs. The State of Andhra Pradesh), wherein it was held that the term "Official Gazette" would include "District Gazette" even under Section 4(1) of the Land Acquisition Act, 1894. The judgment of the learned Single Judge of this Court in A.S.Periasami's case, has more persuasive value than the judgment of the Andhra Pradesh High Court. The Writ Court has also observed that a look at the Tuticorin District Gazette shows that it bears the emblem of the State Government. Therefore, it can be construed as "Official Gazette".



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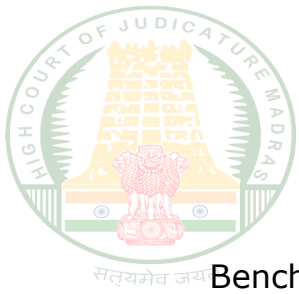
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16. Again with great respect to the Writ Court, we are unable to agree with the said view. The Writ Court has lost sight of the fact that a publication in the Fort St. George Gazette, would amount to publication all over the State whereas publication in the District Gazette is limited to the particular District.

17. When the legislature has used the term "Official Gazette" in Section 11(1) of the 2013 Act and the Rules framed by the State indicate that publication should be made in the Tamil Nadu Government Gazette, we do not think that we could uphold the interpretation of the Writ Court that the term " Official Gazette" will include the concerned District Gazette also."

33. The Division Bench of the Madurai Bench of this Court, after taking note of Section 3(e)(v) of the Act, has come to the categorical conclusion that the preliminary Notification should be published in the Tamil Nadu Government Gazette and that just because the District Collector has been designated as the appropriate Government, it will not enable the District Collector to publish the Notification under Section 11 of the Act in the District Gazette.

34. This Court is bound by the said judgment of the Division



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Bench of the Madurai Bench of this Court. In the case in hand, admittedly, the Notification under Section 11(1) of the Act has been published only in the Chengelpet District Gazette and not in the Tamil Nadu Government Gazette. This is yet another ground, which vitiates the very preliminary Notification that was issued under Section 11(1) of the Act dated 22.1.2024.

35. For the foregoing reasons, this Court finds that the acquisition proceedings stand vitiated due to the non compliance of the mandate under Sections 11(1) and 15 of the Act. As a result, all the subsequent proceedings will have to fall through since illegality strikes at the very root of the Notification issued by the third respondent. The conspectus of the above discussions leads to the only conclusion that the acquisition proceedings require interference of this Court.

36. In the result, the writ petition is allowed, the Notification in R.C.No.3989/2023/B1 dated 22.1.2024 and the proceedings bearing reference No.Rc.3989/2023/B1, No.VI(1)/459/2024 dated 17.6.2024 are hereby quashed. It is left open to the respondents to initiate acquisition proceedings afresh by strictly following the procedure



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prescribed under the Act and proceed further in accordance with law.

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No costs. Consequently, the connected WMPs are closed.

03.3.2025

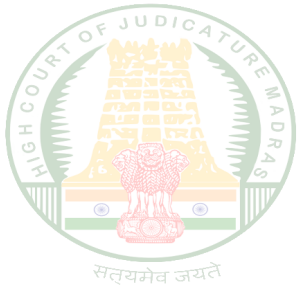
Index : Yes
Neutral Citation : Yes

To

- 1.The Secretary to Government
of Tamill Nadu, Housing &
Urban Development
Department, Fort St.George,
Chennai-105.
- 2.The Commissioner of Land
Administration, Revenue &
Disaster Management
Department, Chepakkam,
Chennai.
- 3.The District Collector,
Chengelpet District,
District Collector Office,
Chengelpet.
- 4.The Member Secretary,
Chennai Metropolitan
Development Authority,
Thalamuthu Natarajan
Building, No.1, Gandhi
Irwin Road, Egmore,
Chennai-8.

RS

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N.ANAND VENKATESH,J

RS

W.P.No.29765 of 2024 &
WMP.Nos32445, 32446,
32449 & 39093 of 2024

03.3.2025