

(2012) 12 MAD CK 0078

In the Madras High Court

Case No : Writ Petition No. 3880 of 2012

A. Nagarajan and Others

APPELLANT

Vs

The Secretary to Government, Housing and Urban
Development Department

RESPONDENT

Date of Decision : 21-12-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 2 Rule 2, 11
Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 10, 11, 11(1), 11A, 11A(1)

Citation : (2013) 1 CTC 241 : (2013) WritLR 487

Hon'ble Judges : V. Dhanapalan, J

Bench : Single Bench

Advocate : V.T. Gopalan, for M. Elango, for the Appellant; S. Gomathinayagam, Additional Advocate General for V.M. Velumani, Special Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

V. Dhanapalan, J.—Challenging the award passed by the 2nd Respondent herein vide ROC No. 929/98 in Award No. 1/2003-2004 dated 30.4.2003, the Section 4(1) Notification issued by the 1st Respondent vide G.O.Ms. No. 147, Housing and Urban Development Department, dated 29.3.2000 and Section 6 Declaration of the 1st Respondent in G.O. Ms. No. 272, Housing and Urban Development Department, dated 16.5.2001, seeking to quash the same in respect of their land measuring an extent of 0.98.5 Hec. comprised in Survey No. 68/3B situated at No. 64, Kottagoundamapatti Village, Omalur Taluk, Salem District, the Petitioners have come up with the present Writ Petition. Facts leading to the filing of the Writ Petition are enumerated thus:

1.1. The Petitioners are members of the joint family and the joint owners of the land measuring an extent of 0.98.5 Hectares comprised in S. No. 68/3B situated at No. 64, Kottagoundampatty Village, Omalur Taluk, Salem District. The 1st Respondent herein, vide G.O.Ms. No. 147, Housing and Urban Development

Department, dated 29.3.2000 has issued a Notification u/s 4(1) of the Land Acquisition Act (hereinafter referred to as "Act") to acquire several pieces of lands comprised in various Survey Numbers including the lands belonging to the Petitioners.

1.2. Pursuant to the same, the 2nd Respondent issued a notice dated 26.06.2000 u/s 5-A of the Act. After conducting an enquiry contemplated under Rule 3(b) of the Rule, the 2nd Respondent forwarded his recommendation to the 1st Respondent recommending to drop the Acquisition proceedings with respect to the Petitioners, as their family consists of eight families, having 23 members in total and therefore, the extent of their land is suffice to construct houses for their own purpose. However, the 1st Respondent, without considering the report of the 2nd Respondent published a Declaration u/s 6 of the Act in G.O.Ms. No. 272, Housing and Urban Development Department, dated 16.5.2001. Thereafter, the Petitioners moved this Court in W.P. No. 16709 of 2001 and it was admitted on 14.9.2001. Pending the Writ Petition, this Court granted stay of dispossession alone. Thereafter, the 2nd Respondent passed the impugned award in his proceedings vide ROC No. 929/1998 in Award No. 1/2003-2004, dated 30.4.2003. On 30.10.2008, the said Writ Petition was dismissed. Aggrieved by the same, the Petitioners went on Appeal in W.A. No. 2179 of 2011 before this Court and the same is pending.

2. It is the case of the Petitioners that as per Proviso to Section 11 of the Act, the 2nd Respondent cannot pass an award without previous approval of the appropriate Government and that the impugned award was admittedly approved by the 3rd Respondent, which is contrary to the said provision. As the value of the impugned award is more than Rs. 40 Lakhs, it must have been approved by the Government. Referring to the Notification in G.O.Ms. No. 2003, dated 13.12.1984, which was issued under the First Proviso of Section 11(1), the Petitioners would state that the Notification authorizes the Commissioner of Land Administration to approve every award in which, the total compensation to be allowed exceeds Rs. 10 Lakhs and below Rs. 25 Lakhs and that the District Collector has to approve every award, in which the total compensation to be allowed does not exceed Rs. 10 Lakhs. Hence, no award can be approved by any Officer, who is inferior to District Collector. The Petitioners would contend that the impugned award was not approved by the District Collector, but the 3rd Respondent/District Revenue Officer, who has not much jurisdiction to approve the impugned award, has approved the same.

3. The Petitioners would further contend that as per Section 11(1) of the Act, the 2nd Respondent has no jurisdiction to pass the award without previous approval of the Appropriate Authority and any such award without prior approval cannot be treated as an award. Further, as per Section 11-A of the Act, the valid award should have been passed on or before June 2010, viz., within a period of two years from the date of declaration u/s 6. As per the said Proviso, while computing two years limitation, if any action or proceeding to be taken in

pursuance of Section 6 Declaration is stayed by an order of a Court, it shall be excluded. When the Petitioners approached this Court in W.P. No. 16709 of 2001 after Section 6 Declaration in their locality on 19.05.2001, their possession of the land in question was stayed from 14.09.2001 to 30.10.2008. After dismissal of the said Writ Petition on 30.10.2008, a period of 1 years and 8 months was available to the Respondents for passing of a valid award; however, no such award was passed by the Respondents before the said date. Hence, the entire Acquisition proceedings viz., Section 4(1) Notification and 6 Declaration lapsed in June 2010 itself. Being aggrieved by the arbitrary action of the Respondents and left with no alternative remedy, the Petitioners are once again before this Court by way of the present Writ Petition.

4. The 2nd Respondent/Special Tahsildar (Land Acquisition) Neighbourhood Scheme, Salem, has filed Counter Affidavit, wherein, he has stated as follows:

(i) The Tamil Nadu Housing Board has applied for acquisition of 11.47.5 Acres of land in Survey No. 25/5, etc. in Kottagoundamapatti Village in Omalur Taluk in Salem District for construction of houses by them. The Draft Notification u/s 4(1) of the Act was approved in G.O.Ms. No. 146, Housing and Urban Development Department, dated 29.03.2000 and the same was published in pages 3 & 4 of Tamil Nadu Government Gazette No. 18(A), dated 16.05.2000. The enquiry u/s 5-A of the Act was conducted by the then Special Tahsildar (LA) Neighbourhood Scheme, Salem on 17.07.2000 after due publication and service of notices. The enquiry under Rule 3(b) was conducted on 25.08.2000. Observing the formalities, overruling the objection raised by the landowners, the Draft Declaration u/s 6 of the Act was approved by the Government in G.O.Ms. No. 272, Housing and Urban Development (LA 4-2) Department, dated 16.05.2001, for an extent of 10.43.5 hectares of land and it was published in the Tamil Nadu Extraordinary Gazette No. 348, dated 16.05.2001. For the land under Reference No. 68/3B to an extent of 0.98.5 Hectares, Award was passed by the Land Acquisition Officer vide Award No. 1/2003-2004 dated 13.05.2003 and before passing the award, the said Officer had observed all the Land Acquisition formalities.

(ii) As per the Award Report, the land stands registered in the names of (1) Chinnapaiyan (2) Ponnusaamy (3) Nagarajan (4) Ganesan, and (5) Srinivasan. The above landowners appeared for the award enquiry and presented objection petition jointly. In the absence of any documentary evidence, the reputed owner of the land could not be decided. As such, award amount to a sum of Rs. 4,52,997/- was deposited in the Sub-Court, Mettur u/s 31(2) of the Act. As per the Award Report, two tiled houses, one thatched house and other trees are existing. The Land Acquisition Officer has also fixed tree value and structure value and the same was deposited in the Sub-Court inclusive of land cost. The landowner has filed W.P. No. 16709 of 2001 against the Land Acquisition proceedings. After due enquiry, the Writ Petition was dismissed on 30.10.2008 by this Court, against which, the landowners filed W.A.SR. No. 13593 of 2009 to

condone the delay of 75 days and the said case is not pressed by the landowners.

(iii) The landowners have filed W.A. No. 2179 of 2011 challenging Land Acquisition proceedings stating that "Prior approval" in Section 3(f)(vi) of the Act was not followed. The above land should be taken over u/s 47 of the Act, since the lands are occupied by the ex-landowners. The Executive Engineer & Administrative Officer, Salem Housing Unit has also addressed to the Collector and Tahsildar, Omalur for taking over of land u/s 47 of the Act. However, in the above Writ Appeal, Tamil Nadu Housing Board is not a party. As such, the necessary impleading Petition was filed through their Legal Adviser, Thiru. C. Kasirajan and the same is under process. The above land situated at Salem-Bangalore N.H. 7 on the road has clear approach and good demand from the public. Hence, the land under reference is essentially required for the Comprehensive Housing Scheme, since the surrounding lands are already developed by various Tamil Nadu Housing Board Schemes. Now, the Petitioners have filed the present Writ Petition in W.P. No. 3880 of 2012 seeking to quash the Land Acquisition proceedings for S. No. 68/3B in Kottagoundampatti Village.

(iv) The Tamil Nadu Housing Board has proposed Neighbourhood Scheme in Kottagoundampatti Village for fulfilling the Housing demands for the public. For that, various Patta lands are acquired through Land Acquisition Act. The Land Acquisition Officer observed all Land Acquisition formalities before passing the award.

(v) The Tamil Nadu Housing Board has proposed the following Land Acquisition in Kottagoundampatti Village:

(vi) The land under reference No. 68/3B measuring an extent of 0.98.5 Hectares award has also been passed by the Land Acquisition Officer vide Award No. 1/2003-2004 dated 13.05.2003. As per Award report, the land was registered in the names of (1) Chinnapaiyan (2) Ponnusamy (3) Nagarajan (4) Ganesan, and (5) Srinivasan. The said landowners appeared for the award enquiry and presented Objection Petition jointly. They have refused to dispose any Written Statement. In the absence of any documentary evidence, the reputed owner of the land could not be decided. As such, the compensation amount of a sum of Rs. 4,52,997/- was deposited in the Sub-Court, Mettur for decision u/s 31(2) of the Act.

(vii) In the meantime, the landowners filed W.P. No. 16709 of 2001 challenging the Land Acquisition proceedings. After due enquiry, the Writ Petition was dismissed by this Court on 30.10.2008. After the dismissal of the same, the Petitioners filed W.A.SR. No. 13593 of 2009 before this Court to condone the delay of 75 days. The above case was not pressed by the landowners. After a period of two years, once again, the landowner filed W.A. No. 2179 of 2011 challenging the Land Acquisition proceedings that "Prior approval" in Section 3(f)(vi) of the Act was not followed. In the said case, the Tamil Nadu Housing Board was not included as a party, as such, the Executive Engineer/Tamil Nadu Housing

Board has filed an Impleading Petition through the Legal Adviser. Now, W.A. No. 2179 of 2011 is pending before this Court.

(viii) The entire Land Acquisition proceedings was approved by the Government. The Award amount was deposited in Mettur Sub-Court u/s 31(2) of the Act. Due to continuous Court cases, possession could not be taken over. The lands were already occupied by the landowner, as such the land should be taken over u/s 47 of the Act and the same is under progress. The land situated abutting Salem-Bangalore N.H. 7 Main Road has good demand from the public. The land has got main approach from the N.H. 7 Road. As such, the land is essentially required for the Housing Scheme and it is also needed for the Tamil Nadu Housing Board and access for the other taken over land lies behind the said property.

5. To the Counter Affidavit filed by the 2nd Respondent, the Petitioners have filed a Reply Affidavit. With regard to the statement made in page No. 5, first paragraph of the Counter that "the land under reference 68/3B measuring an extent of 0.98.5 Hectares, award has also been passed by Land Acquisition Officer vide Award No. 1/2003-2004, dated 13.05.2003", the Petitioners would contend that it is not known as to how many awards could be made in the same Award No. 1/2003-2004. It cannot be that there can be as many number of awards, as the Land Acquisition Officers change. There can be only one award in law. The so called Award No. 1/2003-2004 dated 13.05.2003 is not made known and the question as to how such an award could be made when there is an earlier award in the same Award No. 1/2003-2004, dated 30.04.2003 needs to be gone into. The said paragraph in the Counter Affidavit is totally inexplicable and there is something more than what meets the eyes particularly when the award dated 30.04.2003 is neither denied nor disputed.

5a. The Petitioners would further state that the Applying Body i.e. the Tamil Nadu Housing Board has provided the entire sum of Rs. 42 lakhs as per the Award dated 30.04.2003 to meet out the cost of lands with the Government. The said sum of Rs. 42 lakhs is the total compensation awarded for all the lands covered under the acquisition in question.

5b. As regards the specific averment raised that as per the First Proviso to Section 11(1) of the Act read with G.O.Ms. No. 1027, Revenue, dated 25.09.1992, the Petitioners would submit that the previous approval of the appropriate Government or of such Officer that the appropriate Government may authorize in this behalf, had not been obtained, has not been denied at all except stating in Page No. 6 last paragraph of the affidavit that "the entire Land Acquisition proceedings was approved by the Government". Nothing is stated about the previous approval of the appropriate Government or the Officer authorised by the Government and on this ground alone, the award is vitiated as per the First Proviso to Section 11(1) of the Act. Once, the award is vitiated, the consequence of such award being set aside is as per Section 11-A of the Act and the entire proceedings will automatically result in lapse. More than two years having already lapsed, no award could today be made and the entire Land

Acquisition proceedings shall lapse as provided therein. Therefore, this is not a case, where after the award was made, the Land Acquisition proceedings is challenged. But, it is a case where the award itself is vitiated, the legal consequence of such non-compliance of the First Proviso to Section 11(1) is provided by Section 11-A, by which the entire Acquisition proceedings fall.

6. Mr. V.T. Gopalan, learned Senior Counsel appearing for the Petitioners would strenuously contend that the impugned award passed by the 2nd Respondent is void and non est in as much as no prior approval was obtained from the Appropriate Authority, as mandatorily required u/s 11(1) of the Act. It is his further contention that though the award passed on 30.04.2003 was within two years from the date of Section 6 Declaration, in as much as the award is ab initio void and null, it is not an award in law and no fresh award can be made as per Section 11-A, and the entire proceedings for the acquisition of land shall lapse.

6a. In support of his case, learned Senior Counsel for the Petitioners has relied on the following:

(i) A decision of the Rajasthan High Court reported in Khub Chand and Others Vs. State of Rajasthan and Others,

4. The learned Counsel for the Appellants raised before us the following three points:

(1) The entire Acquisition proceedings were void in as much as the mandatory provision of Section 4 of the Act was not complied with.

(2) After the Deputy Director of Colonisation, Rajasthan Canal Project, had been authorised to perform the functions of a Collector in the districts of Ganganagar, Bikaner and Jaisalmer, the Deputy Director of Colonisation, Suratgarh Division, with headquarters at Hanumangarh, who was appointed earlier to perform the functions of a Collector under the Act within the local limits of the said jurisdiction, had become functus officio in regard to the instant acquisition, and, therefore, the proceedings conducted by him thereafter were null and void.

(3) Under the Land Acquisition Act, the Collector thereunder could make only one award in respect of a Notification and, therefore, when he made the first award in respect of the Notification, he became functus officio and therefore, the second award made by him in respect of the same Notification was void.

12. In the result, the Appellants will be entitled to a Writ of Prohibition restraining the Respondents from giving effect to the said two awards. The order of the High Court is set aside and the Writ Petition filed by the Appellant is allowed with costs...

(ii) Yet another decision of the Rajasthan High Court reported in Bhera Ram Vs. State of Rajasthan,

8. The question is whether the Land Acquisition Officer was competent to do so in as much as after the passing of the order (Annexure-R.1) dated April 17,

1967, he became functus officio. This was thus necessitated for us to consider the relevant provisions of the Act. Section 11 of the Act deals with Enquiry and Award by Collector. The Collector has been empowered to make an award within the time specified in the section. Section 12 provides for Award of Collector when to be final. It lays down that the Award shall be filed in the Collector's Office and subject to what has been provided in the Act shall be final and conclusive evidence as between the Collector and the person interested. It was not contended before the learned Single Judge that the Award (Annexure-R.1) dated April 17, 1967 was not made or that it was not filed. In the Award (Annexure - R.1), it was specifically held that the Petitioner was not entitled to any compensation of the price of the land which belonged to the State Government. He, therefore, ordered for payment to the State Government through Collector, Sriganaganagar and that the remaining land left with the Petitioner was beyond ceiling limit and, therefore, he was not entitled to claim any compensation. The learned Single Judge was right when he held that it was a final order. Thus, under S.12 of the Act, the Award became final and so thereafter, the Land Acquisition Officer could not review the order (Annexure R.1) by making a second Award (Ex. 3) dated June 24, 1967. The order (Ex. 3) dated June 24, 1967 was not warranted as it was an order without authority and the Land Acquisition Officer did not have jurisdiction to pass that Section 31(3) of the Act has been reproduced by the learned Single Judge in the order under Appeal...

9.... In the case on hand, the learned Single Judge was right when he held that the extraordinary powers of this Court cannot be availed of for restoring a wrong order even when the order was set aside by the authority not competent. The Petitioner is not entitled to the relief of restoration of the order (Ex. 3) dated June 24, 1967 passed by the Land Acquisition Officer on review. The learned single Judge had also set aside the order dated April 17, 1967 by which it was held that the Petitioner was not competent to any compensation and remanded the case to the Land Acquisition Officer to examine the Petitioner's case solely on the point of compensation under the relevant provisions of the Act. This finding of the learned Single Judge was not assailed by the Respondents before us.

(iii) a Division Bench decision of this Court reported in M.D. Govindarajan and Others Vs. State of Tamil Nadu and Another,

Under the amended provision of Section 11, no award shall be made by the Collector under the sub-section without the previous approval of the appropriate Government. The Petitioner submits that from the facts above stated, it is clear that the Land Acquisition Officer has not obtained the previous approval of the appropriate Government for passing the Award and as there is no valid award.

We must note that this point is built on the provisions of the Act itself. Section 11(1) speaks about the making of the award....

(iv) A decision of the Supreme Court reported in State of U.P. and Others Vs.

Rajiv Gupta and Another,

6. Section 11 postulates of conducting an enquiry and making the award by the Collector. The First Proviso envisages that "no award shall be made by the Collector under sub-section without the previous approval of the appropriate Government or of such officer as the appropriate Government may authorise in this behalf". It is common knowledge that exercising the power under the First Proviso, the appropriate Government made rules or statutory orders or instructions whatever be the nomenclature, they have statutory operation giving authorisation to the Land Acquisition Collector to make an award up to a particular pecuniary limit without prior approval either of the appropriate Government or an officer authorised by the appropriate Government in that behalf. If the award exceeds the limit, prior approval of the State Governments or authorised officer is mandatory. Any award made in violation thereof, renders the award non est and void as it hinges upon the jurisdiction of the Land Acquisition Collector or Officer. No doubt, Mr. Markandeya is right that the State had not produced before us rules or orders issued under the First Proviso to Section 11 that the Land Acquisition Officer shall not make an award exceeding one crore of rupees without prior approval of the Commissioner, namely, Commissioner, Board of Revenue. But nonetheless, there is a statutory inhibition by First Proviso to Section 11 that the prior approval either of the appropriate Government or of an officer which the appropriate Government Authorises in that behalf, is mandatory for making an award. It is a condition precedent. Obviously, for this reason, the Collector in his Letter dated 20.12.1992, addressed to the Commissioner, seeking prior approval thus:

Proposed award

.....

Thus the proposed lands are disputed lands, and therefore, it has been mentioned in the proposed award that payment of compensation shall be made after obtaining the final report of the Enquiry Officer and the final judgment passed in the cases pending in different Courts. Since, in the present case, the award is to be made up to 21.12.1992 only, it is to request you to kindly give your prior approval on the proposed award.

Its bare reading clearly indicates that the conscience that he is required to make the award on or before 21.12.1992 and to seek prior approval and accordingly he requested the Commissioner to grant him prior approval as is enjoined in the First Proviso to Section 11 to make the proposed award. The heading of the award itself clearly indicates working of his mind that it is only a proposed award and after prior approval is given, he is enjoined to make the award u/s 11 of the Act. Since prior approval was not given before the expiry of 21.12.1992, there is no award made by the Land Acquisition Officer. In the eye of law the proposed award of the Collector u/s 11 of the Act is not the award. As seen, Section 11-A is mandatory and on expiry of two years from the date of publication of

declaration, i.e., on 21.12.1992, the entire proceedings under the Act stood lapsed. We are not concerned in this case with the Proviso to Section 11-A. The High Court was, therefore, not right in its construction that there was an award made by the Collector on 20.12.1992 and the direction to take further steps in that behalf are clearly illegal. The Review Petition is accordingly allowed. The order dated 10.12.1993 of the High Court is set aside and the Appeal is allowed. The Writ Petition stands dismissed but in the circumstances parties are directed to bear their own costs.

(v) A decision of this Court reported in *Golden Granites Vs. K.V. Shanmugam and Others*,

41. Therefore, we are of the view that whenever a statute prescribes that a particular act is to be done in a particular manner, and also lays down that failure to comply with the said requirement leads to severe consequences, such requirement would be mandatory.

42. It is the cardinal rule of interpretation that where a statute provides that a particular thing should be done, it should be done in the manner prescribed and not in any other way. It is settled rule of interpretation that where the statute is penal in character, it must be strictly construed and followed. When a law says that a thing is to be done particularly, it should be done in accordance with the said principles and not otherwise. We have already noticed that the requirement u/s 2 is mandatory and therefore, non-compliance of the same must result in canceling the grant made in favour of the grantee.

(vi) Another Supreme Court decision reported in *M. Ramalinga Thevar Vs. State of Tamil Nadu and Others*,

8. In *Sangappa Gurulingappa Sajjan Vs. State of Karnataka and Others*, the question considered was the scope of Explanation 1 to the Proviso of Section 6 of the Act which also contained a similar restriction that no declaration under the Section shall be made after the expiry of three years from the date of publication of the Notification u/s 4. The said Explanation states that in computing the aforesaid period of three years,-

the period during which any action or proceeding to be taken in pursuance of the Notification issued u/s 4 sub-section (1), is stayed by an order of a Court shall be excluded.

As there was only a stay of dispossession from the land concerned the High Court did not permit that period of stay to be excluded from the three years" period. But this Court reversed the said view of the High Court and stated thus: (SCC pp. 147-48, para 2)

Though there is no specific direction prohibiting the publication of the declaration u/s 6, no useful purpose would be served by publishing Section 6(1) Declaration pending adjudication of the legality of Section 4(1) Notification. If any action is taken to pre-empt the proceedings, it would be stigmatised either as "undue

haste" or action to "overreach the Court's judicial process". Therefore, the period during which the order of dispossession granted by the High Court operated, should be excluded in computation of the period of three years covered by clause (1) of the First Proviso to the Land Acquisition Act. When it is so computed, the declaration published on the second occasion is perfectly valid. Under these circumstances, we do not find any justification to quash the Notification published u/s 6 dated 17.5.1984. The Review Petitions are accordingly dismissed. No costs.

9. Both the above decisions were later followed by this Court in Government of Tamil Nadu and another Vs. Vasantha Bai,

10. Thus, the position is now well settled that even when dispossession alone is stayed by the Court the period during which such stay operates would stand excluded from the time fixed for passing the award, the expiry of which would render the Acquisition proceedings lapsed. In the light of the said interpretation it is now idle to contend that the Government is debarred from proceeding with the acquisition. The Appeal is accordingly dismissed.

(vii) a decision of this Court reported in P. Venkatesan and others v. The Government of Tamil Nadu and another, 2001 (3) LW 518:

10. In this case, the Proviso to Section 11(1) makes it clear that no award shall be made by the Collector without the previous approval of the appropriate Government or of such officer as the appropriate Government may authorise. Hence the prior approval is a mandatory one and admittedly that has not been complied with. The award, thus, being a null and void one, the same is liable to be set aside.

(viii) A Supreme Court decision reported in Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others,

40. The statutory interdict of use and enjoyment of the property must be strictly construed. It is well settled that when a Statutory Authority is required to do a thing in a particular manner, the same must be done in that manner or not at all. The State and other authorities while acting under the said Act are only creature of statute. They must act within the four corners thereof.

59. A decision, as is well known, is an authority for which it is decided and not what can logically be deduced therefrom. It is also well settled that a little difference in facts or additional facts may make a lot of difference in the presidential value of a decision....

(ix) A Supreme Court decision reported in Union of India (UOI) Vs. Chajju Ram (Dead) by Lrs. and Others, :

23. It is now well settled that a decision is an authority for what it decides and not what can logically be deduced therefrom. It is equally well settled that a little difference in facts or additional facts may lead to a different conclusion.

(x) Yet another decision of this Court reported in A. Ramalingam and others v. Special Tahsildar (L.A.), Salem and others, 2004 AIHC 4821:

5.... However, as per the First Proviso to Section 11(1) read with the Notification issued by the Government, it is apparent that the expression "District Collector" as indicated in such Notification u/s 11(1) First Proviso is obviously different from the expression "Collector". In other words, for the purpose of the Land Acquisition Act, for the purpose of taking approval u/s 11(1) (Proviso) such Collector is not the Appropriate Authority, but the "District Collector" is the Appropriate Authority. The District Collector cannot mean the Land Acquisition Collector for the aforesaid purpose.

(xi) A Division Bench decision of this Court reported in N.D. Ramanujam, N.D. Rangan and N.D. Raghavan Vs. The State of Tamil Nadu and Others,

5. Proviso to Section 11(1) of the Land Acquisition Act clearly states that no award shall be made by the Collector under this sub-section without the previous approval of the appropriate Government or of such officer as the appropriate Government may authorise in this behalf. It is further stated that it shall be competent for the appropriate Government to direct that the Collector may make such award without such approval in such class of cases as the appropriate Government may specify in this behalf. The Appropriate Authority to approve the award is notified in G.O.Ms. No. 2003, Revenue, dated 30.12.1984, in which it is stated that the Commissioner of Land Administration has to approve every award, in which the total compensation exceeds Rs. 10 lakhs.

6. The learned Single Judge, as regards the prior approval of the Commissioner of Land Administration, held in the order that the learned Special Government Pleader produced the original file No. Pa.Mu/21657/89, dated 29.05.1990 from the Office of the Commissioner, Land Administration and observed that after going through the file, it is seen that the Note Order was signed by the Special Commissioner and Commissioner of Land Administration and in the copy communicated to the District Collector, the same was signed by the lower officer. After observing so, the learned Single Judge came to the conclusion that the Award in question got the prior approval of the Commissioner of Land Administration as per Section 11(1) of the Act.

(xii) Yet another Division Bench decision of this Court reported in Kolammal (died) and Dr. A. Nagarajan Vs. The State of Tamil Nadu and The Chairman, Tamil Nadu State Housing Board,

4. (iii) In as much as the award was passed on the last date of the prescribed period of limitation, viz., 23.11.1994 and there was no prior approval by the authority concerned, the award passed on 23.11.1994 is not a valid award and hence, the entire Acquisition proceedings commencing from and Notification u/s 4(1) of the Land Acquisition Act, 1894 (in short, "the Act") are liable to be quashed.

23. However, when there is a defect in passing of the award it would be possible for the aggrieved person to point out the same only after passing of the award. The general principle that no Writ Petition would be entertained after passing of the award is inapplicable when the aggrieved person points out that the award is defective, particularly when the mandatory condition of prior approval as per First Proviso to sub-section (1) of Section 11 of the Act was not satisfied and the award was not passed within the prescribed period of two years from the date of last mode of publication of Section 6 Declaration. No doubt, the said challenge should be made within a reasonable time and if there is enormous delay, the same cannot be entertained. As pointed out earlier, in the case on hand, the proceedings of the District Revenue Officer dated 23.11.1994 clearly show that prior approval was not obtained before passing of award on 23.11.1994 and in fact, the District Revenue Officer permitted the Land Acquisition Officer to pass award and get it ratified later, which is not permissible as prior approval is mandatory. As rightly pointed out by the learned Senior Counsel for the Petitioner, it is not an empty formality and it is the duty of the Government or the Authorized Authority to verify all the relevant details commencing from Notification issued u/s 4(1) of the Act and ending with fixation of compensation with reference to various aspects.

(xiii) Another Supreme Court decision reported in *Alka Gupta Vs. Narender Kumar Gupta*,

12.... The object of Order 2, Rule 2 of the Code is twofold. First is to ensure that no Defendant is sued and vexed twice in regard to the same cause of action. Second is to prevent a Plaintiff from splitting of claims and remedies based on the same cause of action. The effect of Order 2, Rule 2 of the Code is to bar a Plaintiff who had earlier claimed certain remedies in regard to a cause of action, from filing a second Suit in regard to other reliefs based on the same cause of action. It does not however bar a second Suit based on a different and distinct cause of action.

(xiv) Another decision of the Supreme Court reported in *Raghubir Singh Sehrawat Vs. State of Haryana and Others*,

43. It also appears that the authorities concerned are totally unmindful of the plight of those sections of the society, who are deprived of their only asset like small house, small industrial unit, etc. They do not realise that having one's own house is a lifetime dream of a majority of the population of this country. Economically affluent class of society can easily afford to have one or more houses at any place or locality in the country but other sections of the society find it extremely difficult to purchase land and construct house. Majority of the people spend their lifetime savings for building a small house so that their families may be able to live with a semblance of dignity. Therefore, it is wholly unjust, arbitrary and unreasonable to deprive such persons of their houses by way of the acquisition of land in the name of development of infrastructure or industrialisation. Similarly, some people set up small industrial units after seeking

permission from the competent authority. They do so with the hope of generating additional income for their family. If the land on which small units are established is acquired, their hopes are shattered. Therefore, before acquiring private land the State and/or its agencies/instrumentalities should, as far as possible, use land belonging to the State for the specified public purposes. If the acquisition of private land becomes absolutely necessary, then too, the authorities concerned must strictly comply with the relevant statutory provisions and the Rules of Natural Justice.

7. Per contra, Mr. S. Gomathinayagam, learned Additional Advocate General appearing for the Respondents would submit that the Land Acquisition Officer observed all Land Acquisition formalities before passing the award and that the entire Land Acquisition proceedings were approved by the Government. He would further submit that the lands are already occupied by the landowners and as such, possession of the lands should be taken over u/s 47 of the Act and the same is under progress. It is his contention that after passing of the award, the landowners cannot challenge the Award proceedings.

7a. To substantiate his case, learned Additional Advocate General has relied on the following decisions:

(i) Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Another,

5. In dealing with this question it is relevant to bear in mind the legal character of the award made by the Collector u/s 12. In a sense it is a decision of the Collector reached by him after holding an enquiry as prescribed by the Act. It is a decision, inter alia, in respect of the amount of compensation which should be paid to the person interested in the property acquired; but legally the award cannot be treated as a decision; it is in law an offer or tender of the compensation determined by the Collector to the owner of the property under acquisition. If the owner accepts the offer no further proceeding is required to be taken; the amount is paid and compensation proceedings are concluded. If, however, the owner does not accept the offer Section 18 gives him the statutory right of having the question determined by Court, and it is the amount of compensation which the Court may determine that would bind both the owner and the Collector. In that case it is on the amount thus determined judicially that the Acquisition proceedings would be concluded. It is because of this nature of the award that the award can be appropriately described as a tender or offer made by the Collector on behalf of the Government to the owner of the property for his acceptance. In *Ezra v. Secretary of State*, it has been held that "the meaning to be attached to the word "award" u/s 11 and its nature and effect must be arrived at not from the mere use of the same expression in both instances but from the examination of the provisions of the law relating to the Collector's proceedings culminating in the award. The consideration to which have referred satisfy us that the Collector acts in the matter of the enquiry and the valuation of the land only as an agent of the Government and not as a

judicial officer; and that consequently, although the Government is bound by his proceedings, the persons interested are not concluded by his finding regarding the value of the land or the compensation to be awarded." Then the High Court has added that such tender once made is binding on the Government and the Government cannot require that the value fixed by its own officer acting on its behalf should be open to question at its own instance before the Civil Court. The said case was taken before the Privy Council in *Ezra v. Secretary of State for India*, and their Lordships have expressly approved of the observations made by the High Court to which we have just referred. Therefore, if the award made by the Collector is in law no more than an offer made on behalf of the Government to the owner of the property then the making of the award as properly understood must involve the communication of the offer to the party concerned. That is the normal requirement under the contract law and its applicability to cases of award made under the Act cannot be reasonably excluded. Thus, considered the date of the award cannot be determined solely by reference to the time when the award is signed by the Collector or delivered by him in his office; it must involve the consideration of the question as to when it was known to the party concerned either actually or constructively. If that be the true position then the literal and mechanical construction of the words "the date of the award" occurring in the relevant section would not be appropriate.

(ii) *The State of Tamil Nadu and Another Vs. P. Kanagamani and Others*,

18. Apart from the above considerations, the decision of the Supreme Court in *Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Another*, referred to already clearly and categorically lays down the proposition that an award made by a Collector u/s 11 of the Act is not a decision and that it is only an offer made by him on behalf of the Government to the owner of the land. That decision will clearly lead to the inevitable conclusion that the award of the Collector made u/s 11 of the Act cannot be questioned by way of a Petition for the issue of a Writ of Certiorari under Article 226 of the Constitution of India.

(iii) *N. Bommon Behram and Another Vs. The Government of Mysore and Others*,

17. Even assuming, as has been contended by the learned Advocate for the Petitioners, that the concluding paragraph of this communication is in excess of jurisdiction, the question that we have to consider is whether a Writ or Certiorari can issue quashing this portion. The hurdles in granting this prayer are many. Firstly, it is a confidential communication issued by the State Government to one of its subordinate officers giving certain directions which they are competent to give under the law. Secondly, it does not embody any official decision in the matter, so as to affect adversely the rights of the Petitioners, and thirdly, it is an administrative communication made in the course of the official duties and is not one which is made by either judicial or quasi-judicial body, calling for our interference under Article 226 of the Constitution. As laid down by the Madras High Court in *Kandaswamy and Others Vs. The Deputy Registrar of Co-operative Societies, Coimbatore and Another*, a departmental communication is not liable

to be quashed by a Writ of Certiorari.

21. In the result, we are of the opinion that the Petitioners are not entitled to any relief. We have held that the Proviso to Section 11 of the Act is valid and that the impugned Notification which is only an official communication issued during the usual course of official business cannot be quashed....

(iv) Babu Singh and Others Vs. Union of India (UOI) and Others,

12. Before we conclude, it must be pointed out that the Writ Petition was filed on April 22, 1969 i.e. nearly six years and one month after the publication of the impugned Notifications and about five years after the award. No explanation is offered why Writ Petition was filed after such an inordinate delay and after the entire process of acquisition was over. The High Court dismissed the Writ Petition in limine presumably on account of delay. This Court in *Aflatoon and Others Vs. Lt. Governor of Delhi and Others*, and *Indrapuri Griha Nirman Sahakari Samiti Ltd. Vs. The State of Rajasthan and Others*, held that if a person allowed the Government to complete the Acquisition proceedings on the basis that the Notification u/s 4 and declaration u/s 6 were valid and then attacked the Notification on the grounds which were available to him at the time when the Notification was published, it would be putting a premium on dilatory tactics. The length of the delay is an important circumstance because of the nature of the acts done within the interval on the basis of the Notification and Declaration and, therefore, a challenge to a Notification u/s 4 and a Declaration u/s 6 of the Act should be made within a reasonable time thereafter. If it is not so done the petition is liable to be dismissed. This appeal must fail for this additional reason because the challenge to two Notifications was after a period of six years and after the whole process of acquisition was over and the State Government had spent a considerable amount in carrying out the public purpose.

(v) Collector Ongole and Another Vs. Narra Venkateswarlu and Others,

4. The next question is whether the learned Judges of the Division Bench were justified in upholding the quashing of the Notification on different grounds. It is seen that the Collector had formed the opinion that the land was required for public purpose, namely, providing houses to the weaker sections of society. The question of non-application of mind does not arise. It is obvious that after consideration of the material before the Collector, the Collector formed the opinion that the land was required for public purpose. The direction of the Government was after protracted litigation and to avoid further litigation, Government had directed to acquire the land. It would not mean that the Collector had abdicated his power u/s 4(1). It is true that the Government had issued instructions for obtaining prior permission of the Government, if the value of the land was more than Rs. 20,000 per acre, the prior permission of the Government in that behalf is necessary. The administrative instructions, no doubt, bind the subordinates but the violation thereof does not constitute an infirmity in the acquisition of the land itself. It is true that the Government could

take appropriate disciplinary action against the officials but it does not constitute infirmity in the valid exercise of power u/s 4(1) and declaration u/s 6 of the Act.

(vi) State of Tamil Nadu and another Vs. Mahalakshmi Ammal and others,

9. It is well-settled law that publication of the declaration u/s 6 gives conclusiveness to public purpose. Award was made on 26.9.1986 and for Survey No. 2/11 award was made on 31.8.1990. Possession having already been undertaken on 24.11.1981, it stands vested in the State u/s 16 of the Act free from all encumbrances and thereby the Government acquired absolute title to the land. The initial award having been made within two years u/s 11 of the Act, the fact that subsequent award was made on 31.8.1990 does not render the initial award invalid. It is also to be seen that there is stay of dispossession. Once there is stay of dispossession, all further proceedings necessarily could not be proceeded with as laid down by this Court. Therefore, the limitation also does not stand as an impediment as provided in the Proviso to Section 11-A of the Act. Equally, even if there is an irregularity in service of notice under Sections 9 & 10, it would be a curable irregularity and on account thereof, award made u/s 11 does not become invalid. Award is only an offer on behalf of the State. If compensation was accepted without protest, it binds such party but subject to Section 28-A. Possession of the acquired land would be taken only by way of a memorandum, Panchnama, which is a legally accepted norm. It would not be possible to take any physical possession. Therefore, subsequent continuation, if any, had by the erstwhile owner is only illegal or unlawful possession which does not bind the Government nor vested u/s 16 divested in the illegal occupant. Considered from this perspective, we hold that the High Court was not justified in interfering with the award.

(vii) Sharadchandra Ganesh Muley Vs. State of Maharashtra and others,

5. It is seen that the bar u/s 11-A was available to the Appellant when the first Writ Petition was filed, since the Amendment Act 68 of 1984 had come into force on September 24, 1984 during the pendency of the Writ Petition. He did not raise the point. Therefore, the Doctrine of "might and ought" engrafted in Explanation IV to Section 11 of the C.P.C. would come into play and the Appellant is precluded to raise the controversy once ver. Therefore, the Doctrine of Constructive res judicata puts an embargo on his right to raise the plea of bar of limitation u/s 11-A.

(viii) Municipal Corporation of Greater Bombay Vs. The Industrial Development Investment Co. Pvt Ltd., and others,

24. In State of Tamil Nadu and others etc. Vs. L. Krishnan and others etc., a Bench of Three Judges of this Court had held that-

the delay in challenging Notification was fatal and the Writ Petitions were liable to be dismissed on the ground of laches.

Exercise of power under Article 226 of the Constitution, after award was made,

was held to have been wrongly made. Delay to make award was not a ground to quash the Acquisition proceedings.

25. In *State of Orissa Vs. Dhobei Sethi and Another*, , it was held that on account of laches on the part of the Petitioners, the Writ Petition was liable to be dismissed. It was also held therein that the subsequent purchaser cannot raise any objection for the validity of the acquisition. The High Court was, therefore, held unjustified in issuing the Writ and quashing the Notification and Declaration under Sections 4(1) and 6 respectively.

26. In *State of Maharashtra Vs. Digambar*, another Bench of three Judges directed dismissal of the Writ Petition on the ground of laches and held that the High Court had not judiciously and reasonably exercised its discretion in passing the Notification u/s 4(1) of the Act.

27. In *The Ramjas Foundation and Others Vs. Union of India and Others*, a Bench of three Judges had held that mere retaining the possession or delay on the part of the authority to pass award are not grounds to challenge the Notification u/s 4(1) and Declaration u/s 6, and the laches was held to be ground to dismiss the Writ Petition. Accordingly this Court allowed the Appeal and dismissed the Writ Petition.

28. In *Ram Chand and Others Vs. Union of India (UOI) and Others*, another Bench of Three Judges of this Court had held that because of inordinate delay in approaching the Court after the entire process of acquisition was over pursuant to Notification u/s 4(1) and Declaration u/s 6, the Court was not justified in quashing the same. Same view was reiterated in *Bhoop Singh Vs. Union of India and others*, *Aflatoon and Others Vs. Lt. Governor of Delhi and Others*, ; *Aflatoon and Others Vs. Lt. Governor of Delhi and Others*, *H.D. Vora Vs. State of Maharashtra and Others*, ; and *Pt. Girdharan Prasad Missir and Another Vs. State of Bihar and Another*,

29. It is thus well-settled law that when there is inordinate delay in filing the Writ Petition and when all steps taken in the Acquisition proceedings have become final, the Court should be loath to quash the Notifications. The High Court has, no doubt, discretionary powers under Article 226 of the Constitution to quash the Notification u/s 4(1) and declaration u/s 6. But it should be exercised taking all relevant factors into pragmatic consideration. When the award was passed and possession was taken, the Court should not have exercised its power to quash the award which is a material factor to be taken into consideration before exercising the power under Article 226. The fact that no third party rights were created in the case is hardly a ground for interference. The Division Bench of the High Court was not right in interfering with the discretion exercised by the learned Single Judge dismissing the Writ Petition on the ground of laches.

(ix) *Balkis Ammal by power of Attorney Agent K.P.M. Abdul Gafor Vs. The State of Tamil Nadu and Another*, :

5. The second contention of the Petitioner is that enquiry u/s 5A of the Act had not been conducted in accordance with law. On this, I will do well to refer to the admitted statements in the Counter Affidavit. According to the Counter Affidavit, the enquiry u/s 5-A of the Act was fixed to take place on 15.10.1985. A notice in this regard was served on the Petitioner on 25.9.1985. The objections of the Petitioner were received by post on 10.10.1985. A copy of the objections was forwarded to the requisitioning body, namely the Divisional Engineer, Telegraphs, Kumbakonam, on 15.10.1985. The remarks of the Department were furnished to the Petitioner by registered post on 30.11.1985. The Petitioner had acknowledged the remarks on 13.12.1985. Thereafter, it is stated that declaration u/s 6 was issued. What is lacking in the statement of facts, as disclosed in the Counter Affidavit, is that the enquiry u/s 5-A was not conducted after the service of the remarks of the Department on the Petitioner (owner). That this is an essential requirement, can be seen from Rule 3(b) of the Rules. Indeed, it has also been laid by this Court in several decisions that such a requirement is absolutely necessary to comply with the requirements of law....

(x) The Municipal Council, Ahmednagar and Another Vs. Shah Hyder Beig and Others, :

17. In any event, after the award is passed no Writ Petition can be filed challenging the acquisition notice or against any proceeding thereunder. This has been the consistent view taken by this Court and in one of the recent cases C. Padma and Others Vs. Dy. Secretary to the Govt. of T.N. and Others, , this Court observed as below: (SCC p. 628, para 4)

4. The admitted position is that pursuant to the Notification published u/s 4(1) of the Land Acquisition Act, 1894 (for short "the Act") in GOR No. 1392 Industries dated 17.10.1962, total extent of 6 acres 41 cents of land in Madhavaram Village, Saidapet Taluk, Chengalpattu District in Tamil Nadu was acquired under Chapter VII of the Act for the manufacture of Synthetic Rasina by Tvl. Reichold Chemicals India Ltd., Madras. The Acquisition proceedings had become final and possession of the land was taken on 30.4.1964. Pursuant to the agreement executed by the Company, it was handed over to Tvl. Simpson and General Finance Co. which is a subsidiary of Reichold Chemicals India Ltd. It would appear that at a request made by the said Company, 66 cents of land out of one acre 37 cents in respect of which the Appellants originally had ownership, was transferred in G.O.Ms. No. 816, Industries dated 24.3.1971 in favour of another subsidiary Company. Shri Rama Vilas Service Ltd., the 5th Respondent which is also another subsidiary of the Company had requested for two acres 75 cents of land; the same came to be assigned on leasehold basis by the Government after resumption in terms of the agreement in G.O.Ms. No. 439 Industries dated 10.5.1985. In G.O.Ms. No. 546 Industries dated 30.3.1986, the same came to be approved of. Then the Appellants challenged the original G.O.Ms. No. 1392, Industries dated 17.10.1962 contending that since the original purpose for which the land was acquired had ceased to be in operation, the Appellants are entitled

to restitution of the possession taken from them. The learned Single Judge and the Division Bench have held that the acquired land having already vested in the State, after receipt of the compensation by the predecessor-in-title of the Appellants, they have no right to challenge the Notification. Thus, the Writ Petition and the Writ Appeal came to be dismissed.

(xi) Ramalingam and Others Vs. The State of Tamil Nadu and Others,

3. In these Appeals, the facts are that the Award u/s 11 of the Land Acquisition Act was given on 7.11.1996, whereas the Writ Petitions were filed on 28.11.1996, i.e. after the award was passed. It has been repeatedly held by the Supreme Court that no Writ Petition should be entertained after the award under the Land Acquisition Act has been passed - vide *Tej Kaur and Others, etc. Vs. State of Punjab and Others*, ; *The Municipal Council, Ahmednagar and Another Vs. Shah Hyder Beig and Others*, *Executive Engineer, Jal Nigam Central Stores Division, U.P. Vs. Suresha Nand Juyal alias Musa Ram (Deceased) by LR's and others, State of Tamil Nadu and others etc. Vs. L. Krishnan and others etc.*, Following the aforesaid decision, we are of the opinion that the Writ Petition itself were not maintainable and they should have been dismissed on this ground itself. Hence, the Writ Appeals are dismissed....

(x) Swaika Properties Pvt. Ltd. and Another Vs. State of Rajasthan and Others,

16. This Court has repeatedly held that a Writ Petition challenging the Notification for acquisition of land, if filed after the possession having been taken, is not maintainable. In *Municipal Corporation of Greater Bombay Vs. The Industrial Development Investment Co. Pvt Ltd., and others*, , where K. Ramaswamy, J. speaking for a Bench consisting of His Lordship and S.B. Majmudar, J. held: (SCC p. 520, para 29)

29. It is thus well-settled law that when there is inordinate delay in filing the Writ Petition and when all steps taken in the Acquisition proceedings have become final, the Court should be loath to quash the Notifications. The High Court has, no doubt, discretionary powers under Article 226 of the Constitution to quash the Notification u/s 4(1) and Declaration u/s 6. But it should be exercised taking all relevant factors into pragmatic consideration. When the award was passed and possession was taken, the Court should not have exercised its power to quash the award which is a material factor to be taken into consideration before exercising the power under Article 226. The fact that no third-party rights were created in the case is hardly a ground for interference. The Division Bench of the High Court was not right in interfering with the discretion exercised by the learned Single Judge dismissing the Writ Petition on the ground of laches.

In the concurring judgment, S.B. Majmudar, J. held as under: *Municipal Corporation of Greater Bombay Vs. The Industrial Development Investment Co. Pvt Ltd., and others*,

35.... Such a belated Writ Petition, therefore, was rightly rejected by the learned

Single Judge on the ground of gross delay and laches. The Respondent-Writ Petitioners can be said to have waived their objections to the acquisition on the ground of extinction of public purpose by their own inaction, lethargy and indolent conduct. The Division Bench of the High Court had taken the view that because of their inaction no vested rights of third parties are created. That finding is obviously incorrect for the simple reason that because of the indolent conduct of the Writ Petitioners land got acquired, award was passed, compensation was handed over to various claimants including the Landlord. Reference applications came to be filed for larger compensation by claimants including Writ Petitioners themselves. The acquired land got vested in the State Government and the Municipal Corporation free from all encumbrances as enjoined by Section 16 of the Land Acquisition Act. Thus right to get more compensation got vested in diverse claimants by passing of the award, as well as vested right was created in favour of the Bombay Municipal Corporation by virtue of the vesting of the land in the State Government for being handed over to the Corporation. All these events could not be wished away by observing that no third-party rights were created by them. The Writ Petition came to be filed after all these events had taken place. Such a Writ Petition was clearly stillborn due to gross delay and laches.

17. Similarly, in *State of Rajasthan and Others Vs. D.R. Laxmi and Others*, following the decision of this Court in *Municipal Corporation of Greater Bombay Vs. The Industrial Development Investment Co. Pvt Ltd., and others*, it was held: *State of Rajasthan and Others Vs. D.R. Laxmi and Others*,

9.... When the award was passed and possession was taken, the Court should not have exercised its power to quash the award which is a material factor to be taken into consideration before exercising the power under Article 226. The fact that no third-party rights were created in the case, is hardly a ground for interference. The Division Bench of the High Court was not right in interfering with the discretion exercised by the learned Single Judge dismissing the Writ Petition on the ground of laches.

18. To the similar effect is the judgment of this Court in *The Municipal Council, Ahmednagar and Another Vs. Shah Hyder Beig and Others*, wherein this Court, following the decision of this Court in *C. Padma and Others Vs. Dy. Secretary to the Govt. of T.N. and Others*, held *The Municipal Council, Ahmednagar and Another Vs. Shah Hyder Beig and Others*,

17. In any event, after the award is passed no Writ Petition can be filed challenging the acquisition notice or against any proceeding thereunder. This has been the consistent view taken by this Court and in one of the recent cases (*C. Padma and Others Vs. Dy. Secretary to the Govt. of T.N. and Others*, .

19. In the present case also, the Writ Petition having been filed after taking over the possession and the award having become final, the same deserves to be dismissed on the ground of delay and laches. Accordingly, the orders of the

learned Single Judge and that of the Division Bench are affirmed to the extent of dismissal of the Writ Petition and the Special Appeal without going into the merits thereof. This Appeal also deserves to be dismissed without going into the merits of the case and is dismissed as such. No costs.

8. Heard the learned Counsel appearing on either side, perused the voluminous records and gone through the decisions relied upon.

9. The Tamil Nadu Housing Board (in short "TNHB") has proposed Neighbourhood Scheme in Kottagoundampatti Village for fulfilling the Housing demands for the public, for which, it has applied for acquisition of 11.47.5 acres of land in Survey No. 25/5, etc. in Kottagoundampatti Village in Omalur Taluk in Salem District. The Draft Notification u/s 4(1) of the Act was approved in G.O.Ms. No. 146, Housing and Urban Development Department, dated 29.3.2000 and the same was published in pages 3 & 4 of Tamil Nadu Government Gazette No. 18(A), dated 16.5.2000. Thereafter, enquiry u/s 5-A of the Act was conducted on 17.7.2000 after due publication and service of notices. The enquiry under Rule 3(b) was conducted on 25.8.2000. After following all the formalities, overruling the objection raised by the landowners, the Draft Declaration u/s 6 of the Act was approved by the Government in G.O.Ms. No. 272, Housing and Urban Development (LA 4-2) Department, dated 16.5.2001, for an extent of 10.43.5 hectares of land and it was published in the Tamil Nadu Extraordinary Gazette No. 348, dated 16.5.2001. For an extent of 0.98.5 Hectares of land under Reference No. 68/3B, an Award has been passed by the Land Acquisition Officer vide Award No. 1/2003-2004, dated 13.5.2003.

10. As per the Award report, the land stands registered in the names of (1) Chinnapaiyan (2) Ponnusaamy (3) Nagarajan (4) Ganesan, and (5) Srinivasan. The said landowners appeared for the award enquiry and presented Objection Petition jointly. In the absence of any documentary evidence, the reputed owner of the land could not be decided. As such, award amount to a sum of Rs. 4,52,997/- was deposited in the sub-Court, Mettur u/s 31(2) of the Act. As per the Award Report, two tiled houses, one thatched house and other trees are existing. The Land Acquisition Officer has also fixed tree value and structure value and the same was deposited in the Sub Court inclusive of land cost. The landowners filed W.P. No. 16709 of 2001 against the Land Acquisition proceedings. After due enquiry, the Writ Petition was dismissed on 30.10.2008 by this Court, against which, the landowners filed W.A.SR. No. 13593 of 2009 to condone the delay of 75 days and the said case was not pressed by the landowners.

11. Thereafter, the landowners filed W.A. No. 2179 of 2011 challenging Land Acquisition proceedings stating that "Prior approval" in Section 3(f)(vi) of the Act was not followed. According to the Respondents, the above land should be taken over u/s 47 of the Act, since the lands are occupied by the ex-landowners. The Executive Engineer & Administrative Officer, Salem Housing Unit has also addressed to the Collector and Tahsildar, Omalur for taking over of the land u/s

47 of the Act. However, in the above Writ Appeal, Tamil Nadu Housing Board is not a party. Therefore, they filed an Impleading Petition and the same is under progress. The land in question situated in Salem-Bangalore N.H. 7, has clear approach and good demand from the public. Hence, the land under reference is essentially required for the Comprehensive Housing Scheme, since the surrounding lands are already developed by various Tamil Nadu Housing Board Schemes.

12. In the claim of the Petitioners, it is seen that they are joint family members living as eight families, having 23 members in total and therefore, the extent of their land is suffice to construct houses for their own purpose. However, the 1st Respondent, without considering the report of the 2nd Respondent, published a Declaration u/s 6 of the Act. In the Writ Petition filed in W.P. No. 16709 of 2001, stay of dispossession alone was granted. However, the 2nd Respondent passed the impugned award on 30.4.2003. It is also their claim that as per the First Proviso to Section 11(1) of the Act, the 2nd Respondent cannot pass an award without previous approval of the appropriate Government and that the impugned award was admittedly approved by the 3rd Respondent, which is contrary to the said provision. Since the value of the award is more than 40 lakhs, it has to be approved only by the Government.

13. As per G.O.Ms. No. 2003, dated 13.12.1984, the Appropriate Authority to approve the award in which total compensation to be allowed exceeds Rupees 10 Lakhs and below Rupees 25 Lakhs is the Commissioner of Land Administration and that the District Collector has to approve every award, in which the total compensation to be allowed does not exceed Rupees 10 Lakhs. Hence, no award can be approved by any Officer, who is inferior to District Collector. On the contrary, the District Revenue Officer, who is the Third Respondent herein has passed the Award in question without jurisdiction to approve the same. Therefore, according to the Petitioners, it is legally infirmed.

14. To examine the above position, it is necessary to refer to the relevant provisions of the Land Acquisition Act, which are thus:

4. Publication of preliminary Notification and powers of officers thereupon.-

(1) Whenever it appears to the [appropriate Government] that 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 and the giving of such public notice, being hereinafter referred to as the date of the publication of the Notification)].

(2) Thereupon, it shall be lawful for any officer, either, generally or specially authorised by such Government in this behalf, and for his servants and

Workmen,-

to enter upon and survey and take levels of any land in such locality;

to dig or bore in the sub-soil;

to do all other acts necessary to ascertain whether the land is adapted for such purpose;

to set out the boundaries of the land proposed to be taken and the intended line of the work (if any) proposed to be made thereon;

to mark such levels, boundaries and line by placing marks and cutting trenches; and

where otherwise the survey cannot be completed and the levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crops, fence or jungle:

Provided that no person shall enter into any building or upon any enclosed Court or garden attached to a dwelling-house (unless with the consent of the occupier thereof) without previously giving such occupier at least seven days' notice in writing of his intention to do so.

5-A. Hearing of Objections.-

(1) Any person interested in any land which has been notified u/s 4, sub-section (1), as being needed or likely to be needed for a public purpose or for a Company may, (within thirty days from the date of the publication of the Notification), object to the acquisition of the land or of any land in the locality, as the case may be.

(2) Every objection under sub-section (1) shall be made to the Collector in writing, and the Collector shall give the objector an opportunity of being heard [in person or by any person authorised by him in this behalf] or by pleader and shall, after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, [either make a report in respect of the land which has been notified u/s 4, sub-section (1), or make different reports in respect of different parcels of such land, to the appropriate Government, containing his recommendations on the objections, together with the record of the proceedings held by him, for the decision of that Government]. The decision of the [appropriate Government] on the objections shall be final.

(3) For the purposes of this Section, a person shall be deemed to be interested in land who would be entitled to claim an interest in compensation if the land were acquired under this Act.

6. Declaration that land is required for a public purpose.-

(1) Subject to the provisions of Part VII of this Act, [when the [appropriate Government] is satisfied, after considering the report, if any, made u/s 5-A, sub-

section (2),] that any particular land is needed for a public purpose, or for a Company, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorised to certify its orders [and different declarations may be made from time to time in respect of different parcels of any land covered by the same Notification u/s 4, sub-section (1), irrespective of whether one report or different reports has or have been made (wherever required) u/s 5-A, subsection (2)]:

[Provided that no declaration in respect of any particular land covered by a Notification u/s 4, sub-section (1)-

(i) published after the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967 (1 of 1967), but before the commencement of the Land Acquisition (Amendment) Act, 1984, shall be made after the expiry of three years from the date of the publication of Notification; or

(ii) published after the commencement of the Land Acquisition (Amendment) Act, 1984, shall be made after the expiry of one year from the date of the publication of the Notification:]

[Provided further that] no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a Company, or wholly or partly out of public revenues or some fund controlled or managed by a Local Authority.

(2) [Every declaration] shall be published in the Official Gazette, [and in two daily newspapers circulating in the locality in which the land is situate of which at least one shall be in the regional language, and the Collector shall cause public notice of the substance of such declaration to be given at convenient places in the said locality (the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the declaration), and such declaration shall state] the district or other Territorial Division in which the land is situate, the purpose for which it is needed, its approximate area, and, where a plan shall have been made of the land, the place where such plan may be inspected.

(3) The said declaration shall be conclusive evidence that the land is needed for a public purpose or for a company, as the case may be; and, after making such declaration the [appropriate Government] may acquire the land in a manner hereinafter appearing.

9. Notice to persons interested.-

(1) The Collector shall then cause public notice to be given at convenient places on or near the land to be taken, stating that the Government intends to take possession of the land, and that claims to compensation for all interests in such land may be made to him.

(2) Such notice shall state the particulars of the land so needed, and shall

require all persons interested in the land to appear personally or by agent before the Collector at a time and place therein mentioned (such time not being earlier than fifteen days after the date of publication of the notice), and to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for such interests, and their objections (if any) to the measurements made u/s 8. The Collector may in any case require such statement to be made in writing and signed by the party or his agent.

(3) The Collector shall also serve notice to the same effect on the occupier (if any) of such land and on all such persons known or believed to be interested therein, or to be entitled to act for persons so interested, as reside or have agents authorised to receive service on their behalf, within the revenue district in which the land is situate.

11. Enquiry and award by Collector.-

(1) On the day so fixed, or on any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objection (if any) which any person interested has stated pursuant to a notice given u/s 9 to the measurements made u/s 8, and into the value of the land [at the date of the publication of the Notification u/s 4, sub-section (1)], and into the respective interest of the persons claiming the compensation and shall make an award under his hand of-

(i) the true area of the land;

(ii) the compensation which in his opinion should be allowed for the land; and

(iii) the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom, or of whose claims, he has information, whether or not they have respectively appeared before him:

[Provided that no award shall be made by the Collector under this sub-section without the previous approval of the appropriate Government or of such officer as the appropriate Government may authorise in this behalf:

Provided further that it shall be competent for the appropriate Government to direct that the Collector may make such award without such approval in such class of cases as the appropriate Government may specify in this behalf.]

[(2) Notwithstanding anything contained in sub-section (1), if at any stage of the proceedings, the Collector is satisfied that all the persons interested in the land who appeared before him have agreed in writing on the matters to be included in the award of the Collector in the form prescribed by Rules made by the appropriate Government, he may, without making further enquiry, make an award according to the terms of such agreement.

(3) The determination of compensation for any land under sub-section (2) shall not in any way affect the determination of compensation in respect of other lands in the same locality or elsewhere in accordance with the other provisions of this

Act.

(4) Notwithstanding anything contained in the Registration Act, 1908 (16 of 1908), no agreement made under sub-section (2) shall be liable to registration under that Act.]

11-A. Period within which an award shall be made.-

(1) The Collector shall make an award u/s 11 within a period of two years from the date of the publication of the declaration and if no award is made within that period, the Entire proceedings for the acquisition of the land shall lapse:

Provided that in a case where the said declaration has been published before the commencement of the Land Acquisition (Amendment) Act, 1984, the award shall be made within a period of two years from such commencement.

Explanation:- In computing the period of two years referred to in this Section, the period during which any action or proceeding to be taken in pursuance of the said declaration is stayed by an order of a Court shall be excluded.

15. From a reading of the above provisions, it is clear as to what are all the principles to be followed in acquisition of the land for public purpose, contemplating notice u/s 4(1) of the Act, holding enquiry u/s 5-A, Declaration u/s 6 and thereafter, passing of an award u/s 11 of the Act.

16. On a perusal of the pleadings and analysis of the provisions of the Act, the following questions arise for consideration:

(i) Whether the Writ Petition is maintainable (a) after the award is passed and (b) due to non-joinder of necessary parties ?

(ii) Whether there is delay and laches in considering the claim of the Petitioners ?

(iii) Whether the Writ Petition is hit by Constructive res judicata ?

(iv) Whether the award is passed with prior approval as per Section 11(1) of the Act and whether it is valid, void and non-est in law ?

17. Coming to the first question, i.e. (a) whether the Writ Petition is maintainable after the award is passed, it is seen that the land Acquisition proceedings have been initiated by issuing a Notification u/s 4(1) of the Act in G.O.Ms. No. 147, Housing and Urban Development Department, dated 29.3.2000 and thereafter, enquiry u/s 5-A of the Act was conducted on 17.7.2000 and after effecting necessary publication, Section 6 Declaration was made on 16.5.2001 vide G.O.Ms. No. 272. An award was passed by the Land Acquisition Officer in Award No. 1/2003-2004 dated 13.5.2003, after following necessary formalities.

18. The Petitioners moved this Court earlier in W.P. No. 16709 of 2001 questioning the Notification dated 29.3.2000 u/s 4(1) of the Act and the Declaration dated 16.5.2001 u/s 6 of the Act. The said Writ Petition was dismissed by the learned Single Judge on 30.10.2008, as against which, the

Petitioners preferred an Appeal in W.A. No. 2179 of 2011 and on 10.4.2012, a Division Bench of this Court passed the following order:

2. When the matter came up for hearing, learned Counsel appearing for the Tamil Nadu Housing Board submitted that pursuant to the Notification dated 29.3.2000 issued u/s 4(1) of the Act, the enquiry, as contemplated u/s 5-A of the Act was conducted; thereafter, Declaration u/s 6 of the Act was issued on 16.5.2001; Acquisition proceedings were contemplated; Award was passed on 23.5.2003 and the Award amount was deposited before Court. If that is the case, then, we hold that the Land Acquisition proceedings had reached its finality as early as on 23.5.2003, viz., the date on which the Award was passed. Therefore, we are not inclined to entertain the present Writ Appeal. Accordingly, the Writ Appeal is dismissed. It is for the Appellants to assail the correctness of the Award by filing an appropriate Application, if they are so advised. No costs. Connected Miscellaneous Petition is closed.

19. From a reading of the above Division Bench order, it is clear that while upholding the Land Acquisition proceedings, the Division Bench has observed that it is for the Appellants to assail the correctness of the Award. Accordingly, the Petitioners have chosen to challenge the Award in question on non-compliance of the First Proviso to Section 11(1) of the Act and Section 11-A of the Act. If the observation of the Court in the said Division Bench order is taken as advantage by the Petitioners, it could be clearly construed that the Petitioners' action in contesting the Award is maintainable, as no challenge was made to the Award in the earlier Writ Petition.

20. While analysing part (b) of the first question "non-joinder of necessary parties", it is seen that the Applying body as per Section 50 of the Act may be considered to be a party only in the matter of any decision for compensation before the Collector or the Reference Court. However, the Local Authority in the case on hand, viz., the Tamil Nadu Housing Board, shall not be entitled to demand, even for reference u/s 18 by itself, as per Section 50 of the Act. In the instant case, the main contention of the Petitioners is that no prior approval was obtained before making the award. Therefore, the requisitioning body, i.e. the Housing Board, though, has a role to play as a formal party, since the issue pertains to correctness of the Award, it is not a necessary party.

21. In fact, the question of maintainability of a Writ Petition after passing of award arose before the Supreme Court in the case of Patasi Devi Vs. State of Haryana and Others, , wherein it is held that in the absence of any evidence to show that actual or even symbolic possession of the land and the house constructed over it is taken by the authorities, the Writ Petition cannot be dismissed solely on the ground that it is filed after passing of the award.

22. In the present case, earlier, there was a challenge to the 4(1) Notification and Section 6 Declaration and now the correctness of the award is disputed. It is pleaded by the Respondents in the Counter that for taking possession, they are

contemplating Section 47 proceedings, from which it is clear that possession of the land is yet to be taken. Therefore, the above law laid down by the Supreme Court will have a bearing on the matter and the Writ Petition cannot be rejected on the point of maintainability.

23. On the second question of "delay and latches", while considering the claim of the Petitioners, it is seen that the Petitioners have challenged the Land Acquisition proceedings dated 29.3.2000 u/s 4(1) of the Act and Section 6 Declaration, dated 16.5.2001 in the earlier Writ Petition in W.P. No. 16709 of 2001, immediately on initiation of the Acquisition proceedings. The said Writ Petition was admitted and stay of dispossession alone was granted on 14.9.2001. Pending the Writ Petition, as there was an order of stay of dispossession alone, the Respondents proceeded further and passed the impugned Award on 30.4.2003. However, the said Writ Petition was dismissed on 30.10.2008, thereby vacating the interim order of stay of dispossession alone. After a considerable period of time, the Petitioners moved this Court in W.A. No. 2179 of 2011 against the dismissal of the said Writ Petition. The Writ Appeal was also dismissed on 10.4.2012, however, with an observation holding that it is for the Appellants to assail the correctness of the Award, by filing an appropriate Application, if they are so advised.

24. Referring to M. Ramalinga Thevar Vs. State of Tamil Nadu and 2 others, , a decision of the Supreme Court reported in wherein, it is well settled that even when dispossession alone is stayed by the Court, the period during which such stay operates would stand excluded from the time fixed for passing the award, learned Senior Counsel for the Petitioners pointed out that in the case on hand, while computing the period of two years u/s 11-A of the Act, such period of stay of dispossession alone would be excluded. He also pointed out that in view of the said judgment, even passing of the impugned Award dated 30.4.2003 in the teeth of the order of stay of dispossession alone, is illegal.

25. Since the Writ Appeal preferred by the Petitioners in W.A. No. 2179 of 2011 came to be dismissed with liberty to them to assail the correctness of the Award and even the validity of Section 6 Declaration was under challenge in the Writ Appeal, though there was no interim order, it cannot be said that the Petitioners were guilty of any latches, because one has to await the result of challenge to Section 6 Declaration. Therefore, there is no delay on the part of the Petitioners to deny the legitimate right.

26. It is also contended by the learned Additional Advocate General that in all cases with regard to delay and latches in respect of Land Acquisition cases, where award has been made and possession has been taken, it has been held that challenge to the award or the Acquisition proceedings after a long time may be fatal. The reliance made by the learned Additional Advocate General with regard to delay and latches could not be held against the Petitioners in view of the fact that the Petitioners have earlier challenged the 4(1) Notification and Section 6 Declaration, as they came to be concluded by dismissal of the Writ

Appeal on 10.4.2012.

27. From the events of this case and considering the fact that there was a challenge to the Land Acquisition proceedings upto the stage of Section 6 Declaration and during the pendency of the Writ Petition, there was an order of stay of dispossession alone, however, there was no interim order during the pendency of the Writ Appeal, it can be concluded that as regards the filing of the Writ Appeal, there is no delay. But, the computation of the period u/s 11-A of the Act has to be examined separately under the question "whether the award is passed with prior approval as per Section 11 of the Act and whether it is non-est and valid in the eye of law".

28. On the third question "as to whether the Writ Petition is hit by constructive res judicata", it is seen that the Principles of res judicata are of universal application, as they are based on two age-old principles, namely, interest reipublicae ut sit finis litium, which means that it is in the interest of the State that there should be an end to litigation and the other Principle is nemo debet bis vexari, si constat curiae quod sit pro una et eadem causa, meaning thereby that no one ought to be vexed twice in a litigation, if it appears to the Court that it is for one and the same cause.

29. The Rule of Constructive res judicata is engrafted in Explanation IV of Section 11 of C.P.C. and in many other situations also, principles of not only of direct res judicata but of Constructive res judicata are also applied, if by any judgment or order, any matter in issue has been directly and explicitly decided, the decision operates as res judicata and bars the trial of an identical issue in a subsequent proceedings between the same parties. In this regard, a Constitution Bench of the Supreme Court in the case of *The Direct Recruit Class-II Engineering Officers' Association and others Vs. State of Maharashtra and others*, has held that an adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had decided as incidental to or essentially connected with subject-matter of the litigation and every matter coming into the legitimate purview of the original action both in respect of the matters of claim and defence. Thus, the Principle of Constructive res judicata underlying Explanation IV of Section 11 of the CPC was applied to writ case. Accordingly, the Constitution Bench held that the Writ case is fit to be dismissed on the ground of res judicata.

30. While analysing the above principle, it could be seen that the cause of action for filing the present Writ Petition arose only after passing of the impugned award dated 30.4.2003. The Petitioners have filed the earlier Writ Petition in W.P. No. 16709 of 2001 challenging Section 4(1) Notification and Section 6 Declaration and at that point of time, the impugned award was not in existence. Therefore, pending the Writ Petition in W.P. No. 16709 of 2001, stay of dispossession alone was ordered. The Award made u/s 11 of the Act is an independent proceeding and as such, it gives a different cause of action which is

different from Section 4(1) Notification and Section 6 Declaration. Therefore, if the cause of action is different, there is no question of Constructive res judicata as per the judgment rendered in Alka Gupta Vs. Narender Kumar Gupta, wherein, in paragraph 12, the Supreme Court has held that "It does not, however, bar a second Suit based on a different and distinct cause of action." In the earlier Writ Petition, challenge was made only to Section 4(1) Notification and Section 6 Declaration and during the pendency of the said Writ Petition, the Award was passed.

31. In view of the above stated position, the Division Bench made an observation that it is for the Appellants to assail the correctness of the Award. When such an observation is made by the Division Bench, the Petitioners have taken advantage of the same and challenged the said Award on the question of non-compliance of the provisions of the Act, which cannot be construed that the Writ Petition is hit by constructive res judicata. The wisdom of the Division Bench in giving such liberty could be taken into account, besides the earlier proceedings, which were under challenge. Therefore, this question also is decided in favour of the Petitioner.

32. With regard to the fourth question as to "whether the award is passed with prior approval as per Section 11(1) of the Act and whether it is valid, void and non-est in law", two grounds are raised by the Petitioners viz., (i) the award is passed without the approval of the appropriate Government and (ii) the award is passed without complying with Section 11-A of the Act.

33. It is seen that u/s 11(1) of the Act, the Collector shall proceed to enquire into the objection, if any, which any person interested has stated pursuant to a notice given u/s 9 to the measurements made u/s 8, and into the value of the land at the date of the publication of the Notification u/s 4, sub-section (1), and into the respective interest of the persons claiming the compensation and shall make an award under his hand of (i) the true area of the land; (ii) the compensation which in his opinion should be allowed for the land; and (iii) the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom, or of whose claims, he has information, whether or not they have respectively appeared before him. The First Proviso to Section 11(1) of the Act provides that no award shall be made by the Collector without the previous approval of the appropriate Government or of such officer as the appropriate Government may authorise in that behalf Further it is provided that it shall be competent for the appropriate Government to direct that the Collector may make such award without such approval in such class of cases as the appropriate Government may specify in this behalf.

34. The legal principles are settled as to what is the requirement for passing an award and who should be the Competent Authority to approve the same. A reading of Section 11-A of the Act contemplates the time within which an award shall be made, which inter alia provides that the Collector shall make an award u/s 11 within a period of two years from the date of the publication of the

declaration and if no award is made within that period, the Entire proceedings for the acquisition of the land shall lapse; provided that in a case where the said declaration has been published before the commencement of the Land Acquisition (Amendment) Act, 1984, the award shall be made within a period of two years from such commencement. In computing the period of two years referred to above, the period during which any action proceeded to be taken in pursuance of the said declaration is stayed by an order of a Court shall be excluded.

35. In this regard, it is contended that the failure to obtain prior approval will make the award null and non-est in law. According to the Petitioners, the Respondents have not stated anything in their Counter about the prior approval for making the award. However, it is pleaded in the counter that the Entire proceedings had been approved by the Government and therefore, there was prior approval to the award. It is disputed by the Petitioners that it cannot be said that there was prior approval to the award, but it is only the Government's approval for publication of Notifications under Sections 4 and 6 of the Act as contemplated u/s 3(f)(vi) of the Act. A perusal of the Award dated 13.5.2003 indicates that the approval was made only on 14.5.2003 by the District Revenue Officer. Therefore, learned Senior Counsel for the Petitioners would strongly contend that there was no prior approval prior to 13.5.2003.

36. On the other hand, the Respondents would contend that the Notification u/s 4(1) of the Act was approved by the Government in G.O.Ms. No. 146, Housing and Urban Development Department, dated 29.3.2000 and the same was published in pages 3-5 of Tamil Nadu Government Gazette No. 18(A), dated 16.5.2000. Thereafter, enquiry u/s 5-A of the Act was conducted by the then Special Tahsildar (LA) Neighbourhood Scheme, Salem on 17.7.2000 after due publication and service of notices. On 25.8.2000, enquiry under Rule 3(b) was conducted and observing the formalities, overruling the objection raised by the landowners, Draft Declaration u/s 6 of the Act was approved by the Government in G.O.Ms. No. 272, Housing and Urban Development (LA 4-2) Department, dated 16.5.2001, for an extent of 10.43.5 hectares of land and it was published in the Tamil Nadu Extraordinary Gazette No. 348 dated 16.5.2001. For an extent of 0.98.5 hectares of land under reference No. 68/3B, Award has been passed by the Land Acquisition Officer vide Award No. 1/2003-2004 on 13.5.2003, after observing all the formalities.

37. In this regard, it is specifically pleaded by the Respondents that the landowners have filed W.P. No. 16709 of 2001 against the Land Acquisition proceedings. After due enquiry, the said Writ Petition was dismissed by this Court on 30.10.2008. Aggrieved by the same, the Petitioners filed W.A. No. 2179 of 2011 challenging the Acquisition proceedings and the same came to be dismissed on 10.4.2012 with liberty to the Petitioners.

38. Section 11 postulates of conducting an enquiry and making the award by the Collector. The First Proviso envisages that "no award shall be made by the

Collector under sub-section without the previous approval of the appropriate Government or of such officer as the appropriate Government may authorise in this behalf". It is common knowledge that exercising the power under the First Proviso, the appropriate Government made rules or statutory orders or instructions whatever be the nomenclature, they have statutory operation giving authorisation to the Land Acquisition Collector to make an award up to a particular pecuniary limit without prior approval either of the appropriate Government or an officer authorised by the appropriate Government in that behalf. If the award exceeds the limit, prior approval of the State Governments or Authorised Officer is mandatory. Any award made in violation thereof, renders the award non-est and void as it hinges upon the jurisdiction of the Land Acquisition Collector or Officer. This is the law laid down by the Supreme Court in State of U.P. and Others Vs. Rajiv Gupta and Another, . In the case on hand, the award amount is more than 40 lakhs and hence, prior approval from the State Government is necessary. Since prior approval was not given before passing the award, there is no award made by the Land Acquisition Officer. In the eye of law, the proposed award of the Collector u/s 11 of the Act is not the award.

39. While analysing the second part of the fourth question that "the award is passed without complying with Section 11-A of the Act", as per Section 11-A of the Act, it is seen that an award should be made within two years from the date of publication of the declaration. In the explanation given therein, it is provided that in computing the period of two years referred to in the above Section, the period during which any action or proceeding to be taken in pursuance of the said declaration is stayed by an order of a Court shall be excluded.

40. To examine the above position, it is seen that Section 4(1) Notification was made on 29.3.2000 and Section 6 Declaration was made on 16.5.2001. The Petitioners filed a Writ Petition in W.P. No. 16709 of 2001, wherein, this Court granted an order of stay of dispossession alone. Thereafter, the Respondents proceeded to pass the award on 30.4.2003, which is within two years from the date of Section 6 Declaration. It is not in question that the award has not been passed within a period of two years. What is questioned by the Petitioners is that there are two awards, which are ab initio void in law.

41. In this regard, it is contended by the learned Senior Counsel for the Petitioners that no power of review is given to the Land Acquisition Officer to review the award earlier made by him. Once the Land Acquisition Officer exercised the power of making award and filed the same in the District Collector's Office as per Section 12 of the Act, the award has attained finality and the Land Acquisition Officer becomes functus officio. Section 13-A of the Act is only for the correction of clerical errors in the award and challenging the correctness of the award is entirely different from it. Therefore, no fresh enquiry was held as stated in the award dated 13.5.2003 by the Land Acquisition Officer for the redetermination of the award.

42. When one of the landowners applied and sought for the subject matter of the

award under RTI Act, the authority furnished only the impugned award dated 30.4.2003 in which the compensation has been determined as Rs. 42,05,621/- and the same has been remitted by the Applying Body in full before the Sub-Court, Mettur. While so, the second award dated 13.5.2003 is inexplicable and except on 28.4.2003 as stated in the award dated 30.4.2003, i.e. in the first award, no enquiry was conducted by the new Land Acquisition Officer, who signed the second Award dated 13.5.2003.

43. The Petitioners have questioned not only the Award dated 30.4.2003, but have also sought for quashing the Section 4(1) Notification and Section 6 Declaration, which proceedings have already been concluded by adjudicating the matter before the learned Single Judge as well as the Division Bench. The said course adopted by the Petitioners in challenging the proceedings again, in the considered opinion of this Court, cannot be sustained. Since the Division Bench has given liberty to the Petitioners only to the extent of assailing the correctness of the award and this Court having considered the questions pertaining to maintainability of the Writ Petition, delay and laches, Constructive res judicata as well as the correctness of the award, by analysing the provisions of the Act and the legal principles enunciated by the Supreme Court in various decisions, it is impermissible for this Court to re-adjudicate the matter on the question of challenging the Section 4(1) Notification and Section 6 Declaration. Therefore, the findings rendered above are only in respect of the correctness of the award and the Petitioners have locus standi to question the same.

44. In this case, as the amount of compensation exceeded Rs. 40,00,000/-, as per G.O.Ms. No. 2003, dated 13.12.1984, neither the District Collector nor his Authorised Officer, who is the Second Respondent herein, was competent to pass the award, but it was only the Commissioner of Land Administration. Then, it is mandatory on the part of the Respondents to pass the award with prior approval from the Government. That apart, the date of Section 6 Declaration was 16.5.2001 and the date of Award is 30.4.2003. As per Section 11-A(1) of the Act, it is clear that the award is passed within two years from the date of Section 6 Declaration.

45. The very object of Section 11(1) Proviso is to get approval from the appropriate Government or the officer authorised for that purpose to accord approval to the award, wherein limit has been fixed and, as per the said Government Order, when the compensation exceeds Rs. 10.00 lakhs, the authority has to get approval from the Government. It cannot be construed that as there was approval by the Government for earlier 4(1) Notification and Section 6 Declaration, that per se is sufficient for passing the award. Therefore, it is manifest from the Proviso that appropriate Government approval is necessary when the award amount exceeds certain limit and that object is to be achieved, as contemplated under the Act. Applying the said proviso to the present case, as the award amount exceeded the limit and it is about Rs. 42.00 lakhs, it was mandatory for the authority to get approval from the Government before the

award was passed, which is, admittedly, not done. On that score, this Writ Petition suffers from legal infirmity.

46. Broadly speaking, as already stated above, in this case, in the earlier round of litigation, Section 4(1) Notification and Section 6 Declaration were challenged by the Writ Petitioners, but the proceedings thereunder were upheld by this Court in W.P. No. 16709 of 2001. Thereafter, on Appeal, the Division Bench also confirmed the same, however, giving liberty to the Petitioners to assail the correctness of the award by filing an appropriate application. As the Division Bench has already concluded the issue, it is not for this Court to relook into the matter. But, in view of the liberty given to the Petitioners to assail the correctness of the Award and the same having been resorted to by the Petitioners, coupled with the legal infirmity as pointed out by me in the foregoing paragraph, it has become indispensable for this Court to interfere with the Award. On analysing the legal principles and the rulings of the Supreme Court and also the records, the award passed by the 2nd Respondent is not in accordance with law. Therefore, the challenge to that extent of the impugned award alone is interfered with. Accordingly, the award passed by the 2nd Respondent in Award No. 1/2003-2004, dated 30.4.2003 is quashed and the matter is remanded back to the authorities concerned to follow the procedures contemplated under the Act in passing the Award, if the land in question covering the said Award is required for public purpose.

The Writ Petition is allowed to the extent indicated above. No costs.