
(2013) 09 MAD CK 0219
In the Madras High Court
Case No : Writ Petition No. 18696 of 2007

B. Hanifa

APPELLANT

Vs

The District Collector Kancheepuram, The Special Tahsildar,
The District Collector Kancheepuram and Others

RESPONDENT

Date of Decision : 10-09-2013

Acts Referred:

Citation : (2013) 09 MAD CK 0219

Hon'ble Judges : P.R. Shivakumar, J

Bench : Single Bench

Advocate : V. Raghavachari, for the Appellant; M.S. Ramesh, AGP for R1 to R3 and R5 and Mr. K. Thilageswaran for R4, for the Respondent

Judgement

P.R. Shivakumar, J.—The present writ petition has been filed seeking issuance of a Writ of Certiorari calling for the records relating to the notification of the 5th respondent in G.O.Ms. No. 2286 dated 06.09.1983 issued u/s 4(1) of the Land Acquisition Act, 1894 and also the consequential proceedings of the second respondent in Na.Ka. 1638/07/A1 dated 26.04.2007 and quash the same as illegal and incompetent. Initially, the petitioner had prayed for quashing of the above said proceedings of the second respondent (Special Tahsildar, ADW, Chengalpet) dated 26.04.2007 alone, in so far as it relates to the petitioner's land comprised in Survey No. 59/4A2 in Vayalur village arraying 1) the District Collector, Kancheepuram, 2) Special Tahsildar (ADW), Chengalpet and 3) Tahsildar, Thirukalukundram Taluk, Kancheepuram District alone, ranking them as Respondents 1 to 3. The 4th respondent Shanmugasundaram filed a miscellaneous petition in M.P. No. 1/2008 for getting impleaded as a party respondent in the writ petition on the ground that he is one of the beneficiaries of the Scheme for which the land acquisition concerned in the writ petition was made. He also wanted to be impleaded himself as a party to represent the interest of other beneficiaries of the Scheme. The said petition was allowed and he was impleaded as 4th respondent in the writ petition. Originally, the proceedings in Na.Ka. 1638/07/A1 dated 26.04.2007 of the second respondent,

which was nothing but a notice issued u/s 47 of the Land Acquisition Act, 1894 directing surrender of possession of the land acquired for the public purpose to the Land Acquisition Officer within seven days from the date of receipt of the said notice and informing that in case of failure, steps would be taken for taking possession in accordance with law alone was challenged. As the said Possession Notice issued u/s 47 of the Land Acquisition Act, 1894, was based on an award of the second respondent made in his award No. 2/84-85 dated 30.03.1985 it was contended on behalf of the respondents that the writ petition challenging the notice u/s 47 of the Land Acquisition Act without challenging the award would not be maintainable. Hence, the petitioner chose to implead the State Government as 5th respondent in the writ petition and amended the prayer by including a prayer for quashing of section 4(1) Notification issued in G.O.Ms. No. 2286 dated 06.09.1993 also. However, while seeking such an amendment in M.P. No. 5/2008, the petitioner had wrongly given the date of the Government Order as 06.09.1993 instead of 06.09.1983, even though the number of the government order has been correctly given as 2286.

2. In the affidavit filed by the petitioner in support of the prayer made in the writ petition, he has stated that an extent of 1.29 acres comprised in S. No. 59/4 originally belonged to one Yousuf son of Dawood Sahib and by virtue of a registered partition deed dated 21.07.1971 to which the said Yousuf and his children were parties, his son Y. Shamsuddin Sahib was allotted the above extent of 1.29 acres comprised in S. No. 59/4 of Vayalur village; that the said Shamsuddin Sahib, who was in exclusive possession of the said property, lost 19 cents as the same was acquired for widening the East Coast Road; that out of the remaining extent of 1.10 acres, Shamsuddin sold 29 > cents to the petitioner B. Haniffa; that after such purchase, the petitioner got patta and assignment separate sub-division number to his property as S. No. 59/4A2; that he has put up a house in the said property and is living in the same along with his family members; that electricity connection was also obtained for the said property in SC 317 in the name of the petitioner and that the petitioner is thus enjoying the said property since 1995. It is his further averment that he has also planted Mango, coconut, eucalyptus, teak, guava, lemon, pomegranate and plantain trees. The further averment made in the affidavit is that the District Collector and Special Tahsildar (ADW), Chengalpattu had attempted to interfere with the possession of the said land comprised in S. No. 59/4A2 in Vayalur village, whereupon the petitioner filed a writ petition in W.P. No. 4477 of 2004 and the said writ petition was disposed of directing that the respondents therein should not disturb the possession of the petitioner except by due process of law; that thereafter, without issuing any notice either to the petitioner or to R. Samsuddin Sahib, namely the Power of Attorney holder of the petitioner, the notice u/s 47 of the Land Acquisition Act, 1894 came to be issued by the third respondent and that when the petitioner approached the respondents, it was informed that the lands had been acquired. It is the further contention of the petitioner found in the affidavit filed in support of the petition that no notice for the acquisition

proceedings was ever issued to the petitioner or his predecessor in title and that hence there cannot be any valid acquisition of the land. It is also the contention made in the affidavit that the third respondent is not a competent person to issue a notice u/s 47 of the Land Acquisition Act, 1894 and therefore, the said notice issued u/s 47 of the Land Acquisition Act should be quashed.

3. As pointed out supra, after the filing of the writ petition with the prayer for quashing the notice issued by the third respondent u/s 47 of the Land Acquisition Act alone, the petitioner chose to amend the prayer by seeking the relief of quashing Section 4(1) Notification also, mainly because it was contended on behalf of the respondents that the notice issued u/s 47 of the Land Acquisition Act could not be challenged without assailing acquisition proceedings. That is the reason why the petitioner has chosen to seek quashing of G.O.Ms. No. 2286 dated 06.09.1983 issued u/s 4 of the Land Acquisition Act and consequential proceedings of the 2nd respondent in Na.Ka. No. 1638/07/A1 dated 26.04.2007. While doing so, the petitioner has given a wrong date of the government order as "06.09.1993" instead of "06.09.1983".

4. The first respondent has filed a counter denying the averments made in the affidavit of the petitioner. It has been contended in the counter affidavit that a total extent of 5.22 acres comprised in S. Nos. 58/1(P), 58/2A, 59/3 and 59/4A was acquired as per Award No. 2/84-85 dated 30.03.1985 passed by the Special Tahsildar (ADW), Chengalpattu; that W.P. No. 3909/1985 was filed challenging the acquisition proceedings and that this court pronounced an order on 21.09.1995 quashing the proceedings under 4(1) notification in respect of the lands comprised in Survey Nos. 58/1 and 58/2 alone, without touching the award in respect of Survey Nos. 59/3 and 59/4; that at the time of passing of the award, S. No. 59/4A stood jointly registered in the name of 1. Subramaniya Pillai and 2. Amitha Bivi and that though as per a registered partition deed dated 21.07.1971, the petitioner's vendor Y. Shamsuddin Sahib had got the property comprised in S. No. 59/4A, he did not take any interest to get patta changed in his name. It is the further contention made in the counter affidavit that S. No. 59/4A has now been sub-divided into S. Nos. 59/4A1, 4A2 and 4A3 and the same stands in the name of Adi Dravidar Welfare Department and that since sale in favour of the petitioner was made after the passing of the award, the same was invalid and for the same reason, the petitioners construction of a house and growing trees in the land were also against law. It is the further contention that one Shanmuga Sundaram filed a writ petition in W.P. No. 10972/2007 for the removal of the encroachments made in the above said land of 1.09 acres comprised in S. No. 59/4A; that it was true that the petitioner on an earlier occasion approached this court by filing a writ petition in W.P. No. 4477/2004 contending that the District Collector, Kanchipuram and the Special Tahsildar (ADW), Chengalpattu made attempts to interfere with the possession of the petitioner in respect of the land; that since it was informed by the respondents that they were not inclined to interfere with the possession of the petitioner except by adopting due process of law, the said writ petition was disposed of

directing them not to interfere with the possession of the petitioner except by adopting due process of law; that thereafter as per the Award No. 2/85 dated 30.03.1985, the District Collector, Kancheepuram and the Special Tahsildar (ADW), Chengalpattu took steps as per law to get possession of the land comprised in S. No. 59/4A and that thereafter the first respondent has made the third respondent, the Executive Magistrate and Revenue Tahsildar, Thirukalukundram Taluk, to evict the occupants of the acquired land u/s 47 of the Land Acquisition Act. It has also been contended in the counter affidavit that the second respondent rightly approached the third respondent, being a jurisdictional Executive Magistrate, empowered u/s 47 to evict the occupants of the land, which was acquired for public purpose, namely for providing house sites to Adhi Dravidas and that hence the challenge made to the said notice of the third respondent issued u/s 47 is bound to be rejected as untenable.

5. For the challenge made to the government order issuing notification u/s 4(1), it has been contended on behalf of the respondents that the petitioner being a purchaser having purchased the land from the registered owner not only after the issuance of section 4(1) notification but also after the passing of the award, is not competent to challenge the acquisition proceedings; that such sale after the initiation of the acquisition proceedings is void against the State and that the petitioner, being a subsequent purchaser during the acquisition proceedings can, at the best, step into the shoes of his Vendor and challenge the reasonableness of the compensation. Based on the said averments the respondents have prayed for the dismissal of the writ petition.

6. The arguments advanced by Mr. V. Raghavachari, learned counsel for the petitioner, by Mr. M.S. Ramesh, learned Additional Government Pleader appearing for the respondents 1 to 3 and 5 and by Mr. K. Thilageswaran, learned counsel for the 4th respondent were heard. The documents produced by the petitioner and also the documents available in the file relating to the acquisition proceedings in question produced by the Additional Government Pleader were also perused. This court paid its anxious considerations to the same.

7. Mr. V. Raghavachari, learned counsel for the petitioner has put forward the following contentions:

a) The third respondent, namely the Revenue Tahsildar is not a competent person to issue the notice u/s 47 of the Land Acquisition Act, 1894. The said section empowers the Collector to enforce surrender of the land to himself, if he is a Magistrate and if he is not a Magistrate, he has to apply to a Magistrate. Hence only the Magistrate is empowered to enforce of the land acquired by the government. The third respondent being the Tahsildar of Thirukalukundram Taluk is not a competent person to enforce surrender of the land and hence the notice issued by the third respondent u/s 47 of the Land Acquisition Act, 1894 is without power and the same is liable to be quashed.

b) No notice was issued either to the petitioner or to his predecessors in title at

any stage of the acquisition proceedings before the issue of notice u/s 47 of the Land Acquisition Act, 1894. Admittedly, possession is with the petitioner and that is the reason why notice seeking surrender of possession u/s 47 of the Land Acquisition Act came to be issued. The purchase made by the petitioner was accepted by the revenue authorities by effecting sub division and issuing a separate patta to him. The petitioner was also permitted to make improvements by putting up construction spending huge amount. Hence, applying the principle of estoppel, the respondents should be restrained from interfering with his possession and on that ground also the acquisition proceedings initiated by the issuance of notification u/s 4(1) and subsequent proceedings including the possession notice issued u/s 47 of the Land Acquisition Act, 1894 should be quashed.

8. The learned Additional Government Pleader as well the counsel for the 4th respondent made the following submissions.

a) The contention raised on behalf of the petitioner that the third respondent being a Tahsildar is not competent to issue a notice u/s 47 of the Land Acquisition Act to enforce surrender of the land is based on a total misconception and the contention that the provision found in section 47 of the Land Acquisition Act, 1894 does empower the Tahsildar to do so, seems to have been made as if the petitioner is ignorant of the fact that the Tahsildar is not the Executive Magistrate of the Taluk. Hence the challenge made to the notice u/s 47 of the Land Acquisition Act, 1894 on the ground of want of power to the third respondent is bound to be rejected as untenable.

b) If any one purchases the property after initiation of the acquisition proceedings, his sale deed is void as against the government. In the case of the petitioner, he got the sale deed several years after the award came to be passed. With an intention to mislead and suppress the date on which the petitioner got the sale deed in his favour, the petitioner suppressed the date of sale deed under which he purchased the property. The petitioner has also failed to produce at least a copy of the sale deed under which he purchased the property as a document included in the typed set of papers. The same is a deliberate attempt made by the petitioner to make it appear as if his sale deed came into existence even before the passing of the award. In any event, the petitioner being a subsequent purchaser, is not entitled to challenge the acquisition proceedings on the ground of absence of notice or on the ground that the purpose for which acquisition was made was not for a public purpose.

c) The petitioner cannot challenge the correctness of the award and he can only question the reasonableness of the amount awarded as compensation and claim a reference to be made for fixing a higher amount as reasonable compensation. Therefore, the additional prayer made by amending the petition also falls to the ground and the same shall be rejected as untenable.

9. The first contention raised on behalf of the petitioner is that the impugned

notice dated 26.04.2007 issued u/s 47 of the Land Acquisition Act, 1894 being one issued by the Tahsildar of Thirukalukundram Taluk at the instance of the Special Tahsildar (ADW), Chengalpet should be construed as a notice issued by a person not empowered to issue it. The learned counsel for the petitioner wanted to contend before this court that the 3rd respondent Tahsildar is not a Magistrate and hence the notice u/s 47 for enforcement of surrender of the land by the third respondent should be construed as a notice issued by an incompetent person. As rightly contended by the learned Additional Government Pleader and the counsel for the 4th respondent, the above said contention of the learned counsel for the petitioner is totally untenable and the same has got to be discountenanced for the simple reason that the impugned order of the third respondent dated 26.04.2007 made in proceedings Na.Ka. No. 1638/01/A1 dated 26.04.2007 was issued by the third respondent in his capacity as the Executive Magistrate of the Taluk. The impugned order itself shows that the third respondent signed the order as Executive Magistrate-cum-Tahsildar, Thirukalukundram. Therefore, there cannot be any scope for accepting the contention of the learned counsel for the petitioner that the impugned notice dated 26.04.2007 of the third respondent is one issued by an incompetent person on the assumption that the notice was issued by the third respondent as Tahsildar simpliciter and not as Executive Magistrate and Tahsildar.

10. Having failed to impress the court with the above said argument, the learned counsel for the petitioner made a meek attempt to contend that only a Collector can ask a Magistrate to enforce surrender of possession of the acquired land u/s 47 of the Land Acquisition Act, 1894 and that since the impugned notice dated 26.04.2007 came to be issued by the third respondent, of course may be in his capacity as Executive Magistrate, at the instance of the Special Tahsildar (ADW), Chengalpet (the second respondent), the same is not competent and hence vitiated. It is the further contention of the learned counsel for the petitioner that only a Collector can request the Magistrate to enforce surrender of acquired land u/s 47 of the Land Acquisition Act and not any other officer empowered to conduct acquisition proceedings and pass award.

11. The above said contention of the learned counsel for the petitioner is based on a total misconception. Of course section 47 does not refer to any other officer and it refers to the Collector alone. For better appreciation, section 47 of the Land Acquisition Act, 1894 is reproduced here under:

47. Magistrate to enforce surrender.-If the Collector is opposed or impeded in taking possession under this Act of any land, he shall, if a Magistrate, enforce the surrender of the land to himself, and if not a Magistrate, he shall apply to a Magistrate or (within the towns of Calcutta, Madras and Bombay) to the Commissioner of Police, and such Magistrate or Commissioner (as the case may be) shall enforce the surrender of the land to the Collector.

Contending that the section simply refers to Collector and it does not refer to any other officer to whom the powers of the Collector have been delegated under the

Land Acquisition Act, the learned counsel for the petitioner contended that only a Collector can apply to a Magistrate for enforcement of the surrender of the acquired land to the Collector. Assigning such a narrow meaning to the term collector shall not be proper and it shall not be in accordance with the provisions of the Land Acquisition Act, 1894. Section 3(c) defines the term "collector" as follows:

(c) the expression Collector means the Collector of a district, and includes a Deputy Commissioner and any officer specially appointed by the [appropriate Government] to perform the functions of a Collector under this Act;

From the above said explanation to the term "collector", it is quite obvious that the term "collector" does not have the restrictive meaning of referring to the District Collector alone. It includes a Deputy Commissioner or any other officer specially appointed by the appropriate government to perform the functions of the collector under the Land Acquisition Act. In this case, sufficient materials have been placed before the court by the respondents to show that the second respondent, namely the Special Tahsildar (ADW), Chengalpattu was the officer specially authorised to perform the functions of the collector under the Land Acquisition Act for the acquisition of the land for the purpose of the scheme of providing house sites to the Adhi Dravidas and it has also been made clear that the second respondent as Land Acquisition Officer passed an award in Award No. 2/84-85 dated 30.03.1985 for the acquisition of the following lands in Vayalur village

As soon as the passing of the said award, a writ petition came to be filed challenging the acquisition proceedings, but the same was allowed quashing the post section 4(1) notification such as of the acquisition proceedings in respect of S. Nos. 58/1 and 58/2 alone. The said writ petition came to be filed by one Saliha Sahib, who is none other than the brother of the vendor of the petitioner herein. In the said writ petition it was contended that though the Land Acquisition Officer would be justified in issuing notice for 5A enquiry to the persons whose names were found in the revenue records as owners or persons interested, the purpose of effecting publication of notification u/s 4(1) was to enable the interested persons to come and raise their objection for the acquisition and that when the persons, whose names are not found in the revenue records come forward to show their interest and raise objections, they should be heard and their objections should be considered. It has also been held that though the Land Acquisition Officer would be justified in proceeding with the acquisition proceedings after giving notice to the persons whose names were found in the revenue records, when such person, who is given such notice, informs the Land Acquisition Officer that there had been a change in ownership, the Land Acquisition Officer cannot simply shut his eyes and proceed with the acquisition without giving notice to such interested person, even after it was brought to his notice by the person to whom notice for 5A enquiry was given.

12. Based on the said principle, which was enunciated in the judgment of a Full

Bench of this court in P.C. Thanikavelu Vs. The Special Deputy Collector for Land Acquisition, Madras and Another, and judgment of the Supreme Court in Rambhai Lakhbai Bhakt Vs. State of Gujarat and others, , this court held that the petitioner in W.P. No. 3909/1985 was entitled to be heard in the enquiry u/s 5A before taking a decision regarding issuance of declaration u/s 6. In that context, this court also noted the fact that Mohammed Saliha Sahib, the petitioner therein had submitted an objection in writing before the conclusion of section 5A enquiry and having become aware of the interest of the petitioners therein in the properties sought to be acquired, he ought to have been served with a notice for section 5A enquiry and the failure to do so vitiated the acquisition proceedings from the stage subsequent to the issuance of notification u/s 4(1). This court, in the said case, quashed the acquisition proceedings subsequent to 4(1) notification. It was also made clear that the Land Acquisition Officer might proceed with the acquisition proceedings relating to those lands from 5A enquiry stage after giving notice to the petitioner therein and proceed in accordance with law.

13. Initially, even a copy of the said judgment had not been produced. But, at a later point of time, the learned counsel for the petitioner got an un-authenticated copy of the order passed in the said writ petition and produced it. A reading of the said order would show that the writ petition was filed challenging the acquisition proceedings in respect of Survey Nos. 58/1 and 58/2 alone and the acquisition proceedings subsequent to 4(1) notification was quashed only in respect of those two survey numbers. Even in respect of those two survey numbers, the notification u/s 4(1) of the Land Acquisition Act was left undisturbed. As pointed out supra, the petitioner in the said writ petition was none other than the brother of Y. Shamsuddin Sahib, the vendor of the petitioner in the present writ petition. While his brother chose to file the said writ petition and get the acquisition proceedings relating to his lands quashed from the stage of 5A enquiry, the petitioner's vendor simply kept quiet without challenging the acquisition proceedings. Therefore, as rightly contended by the learned Additional Government Pleader and the counsel for the 4th respondent, the award was quashed only in respect of survey Nos. 58/1 and 58/2 and the award was kept in tact in respect of the remaining two survey numbers.

14. It seems the vendor of the petitioner did not show any interest in challenging the acquisition proceedings. On the other hand, after a lapse of a number of years from the date of passing of the award, he seems to have executed sale deeds in favour of the petitioner herein and one Preetha Jacob. The said Preetha Jacob, in turn, sold the property purchased from Shamsuddin Sahib to one Selvam. The sale deed in favour of Preetha Jacob came to be executed on 6.11.1990 i.e. five years after the passing of the award. A sale deed executed by the said Preetha Jacob in turn to Selvam is dated 05.11.2001. The petitioner, who has chosen to produce those two sale deeds, has not chosen to produce the sale deed under which he purchased a part of the property comprised in S. No. 59/4. From the averments found in the affidavit, it will be obvious that he claims

to have purchased the property in 1995 as he has stated in the affidavit that the petitioner planted mango, coconut, eucalyptus, guava, lemon, pomegranate and plantain trees since 1995 and enjoying its usufructs. It seems the petitioner, who has produced a copy of the Power of Attorney dated 08.03.2004, has deliberately omitted to produce a copy of the sale deed under which he claims to have purchased 29 > cents out of the extent available in S. No. 59/4 after acquisition for widening the East-Coast Road. It seems the petitioner and the said Selvam got the property transferred in their names after the award was passed to inter meddle with the property and to play gambling to get the property released from the acquisition proceedings.

15. It is obvious from the fact that the petitioner and the said Selvam had jointly engaged a counsel and issued a notice to the Tahsildar, Thirukalukundram Taluk on 14.05.2007, a copy of which is found in page 47 of the typed set of papers filed by the petitioner. From the contents of the said notice, it is obvious that pursuant to the attempts made by the Special Tahsildar (ADW), Chengalpet to take possession of the acquired land, the above said Selvam chose to file a suit in O.S. No. 93/2002 on the file of the District Munsif cum Judicial Magistrate, Thirukalukundram for injunction. In the same way, the petitioner filed a writ petition on the file of this court in W.P. No. 4477/2004 on the pretext that he was sought to be forcibly evicted without following due process of law. The Special Tahsildar (ADW), Chengalpattu and the District Collector, Kancheepuram District were the respondents therein. Since the Government Advocate representing the said officers submitted before the court that they would not interfere with the possession of the petitioner except by adopting due process of law. Since it was contended in the said writ petition that the officials were making attempts to interfere with the possession of the petitioner without adopting due process of law, the officials made it clear that they were not going to interfere with the possession of the petitioner in any manner without adopting due process of law. The same was recorded and the said earlier writ petition was disposed of accordingly. Only thereafter the second respondent took steps to take possession of the acquired land. But, since he could not take possession, he had to approach the jurisdictional Executive Magistrate, namely the third respondent to enforce surrender by issuing a notice u/s 47 of the Land Acquisition Act. Thus the impugned notice of the third respondent came to be issued.

16. It is also pertinent to note that the other person who got the other portion of the land from Y. Shamsuddin Sahib through Preetha Jacob filed a suit for injunction on the file of the learned District Munsif-cum-Judicial Magistrate, Thirukalukundram in O.S. No. 93/2002. Of course the petitioner submitted that a decree had been passed in the said suit in favour of the plaintiff therein, namely Selvam. The learned Additional Government Pleader would submit that steps have been taken challenging the decree. From the said facts, it shall be obvious that when properties belonging to Shamsuddin Sahib and Mohammed Saliha Sahib were acquired by the government, Mohammed Saliha Sahib alone filed a writ petition challenging the acquisition proceedings only in respect of his

properties comprised in S. Nos. 58/1 and 58/2 and got an order quashing the acquisition proceedings based on 4(1) notification stage so far as those two survey numbers were concerned. In the meanwhile, his brother Shamsuddin Sahib simply kept quiet and executed sale deeds in respect of portions of his land, which were the subject matter of the Land acquisition Award concerned in this writ petition to one Preetha Jacob and to the petitioner herein. The said Preetha Jacob also sold the property purchased by her to one Selvam and both Selvam and the petitioner acted with an understanding that Selvam would file a suit for injunction, whereas the petitioner would challenge the acquisition proceedings by filing a writ petition. The modus operandi adopted by the above said persons will show that the land owners were bent upon bringing about multifarious legal action one after another against the acquisition proceedings to stall the acquisition proceedings and to deny the benefit of the acquisition to the beneficiaries, who are the members of a downtrodden community.

17. It is also pertinent to note that, since the properties were sought to be sold to the petitioner and the above said Selvam and they started putting up constructions after acquisition,, one of the beneficiaries of the acquisition, who is none other than the fourth respondent in this petition, chose to file a writ petition in W.P. No. 10972/2007 for a direction to remove the encroachments made in S. No. 59/4A of Vayalur village. The successive attempts made by the petitioner's predecessor in title, the petitioner and another person, who purchased another portion from the petitioner's predecessor in title to nullify the acquisition proceedings and to deny the benefit of the acquisition to the beneficiaries will be seen from the facts narrated above. Such an attempt has been made after the award was passed not by the person, who was the owner at the time of initiation of acquisition proceedings, but by the persons who chose to purchase portions of the acquired land after an award was passed.

18. It has been well settled that when a person purchased the property pending acquisition proceedings, such a sale in his favour shall be void as against the State. In U.P. Jal Nigam, Lucknow through its Chairman and another Vs. M/s. Kalra Properties (P) Ltd. Lucknow and others, , the Hon''ble Apex Court has held that when alienation of the land after 4(1) notification is made, such a sale is void as against the State and the purchaser shall not have any right or title or interest so as to enable him to challenge the validity of the 4(1) notification and that however such purchaser could step into the shoes of the owner and claim compensation. The relevant portion of the judgment is extracted below:

3... It is settled law that after the notification u/s 4(1) is published in the Gazette any encumbrance created by the owner does not bind the Government and the purchaser does not acquire any title to the property.

... That apart, since M/s. Kalra Properties, respondent had purchased the land after the notification u/s 4(1) was published, its sale is void against the State and it acquired no right, title or interest in the land. Consequently, it is settled law that it cannot challenge the validity of the notification or the regularity in taking

possession of the land before publication of the declaration u/s 6 was published.

The same was followed by a Division Bench of this court headed by the Hon''ble The Chief Justice Mr. M.Y. Eqbal, as he then was, in *The Administrative Officer, Special Project Division (K.K. Nagar) Tamil Nadu Housing Board, II Floor (Rear Wing), T.N.H.B. Complex, Ashok Nagar, Chennai-83 and The Managing Director, Tamil Nadu Housing Board, Nandanam, Chennai-35 Vs. V. Chandrasekaran, Saraswathi Chandrasekaran (Rep. by her Power of Attorney Agent the first respondent), The Special Tahsildar (Land Acquisition), Unit-V, Tamil Nadu Housing Board Scheme, Nandanam, Chennai-35 and The State of Tamil Nadu*. The views expressed in the said judgments will show that, the petitioner having purchased the property after the 4(1) notification and after the passing of the award, does not have the locus standi to question the 4(1) notification and the acquisition proceedings. At the best, he can step into the shoes of his vendor and claim compensation.

19. There are a number of decisions that even the person who was the owner at the time of 4(1) notification cannot keep quiet and challenge the 4(1) notification after a lapse of considerable time. A Constitution Bench of the Hon''ble Supreme Court in *Aflatoon and Others Vs. Lt. Governor of Delhi and Others*, made the following observations:

.... to have sat on the fence and allowed the government to complete the acquisition on the basis that notification u/s 4 and the declaration u/s 6 were valid and then to attack the notification on the grounds which were available to them at the time when the notification was published, would be putting a premium of dilatory tactics. The writ petitions are liable to be dismissed on the ground of laches and delay on the part of the petitioner.

20. In *State of Rajasthan and Others Vs. D.R. Laxmi and Others*, , the Hon''ble Supreme Court made the following observations:

..... Delay in challenging the notification was fatal and writ petition entails with dismissal on grounds of laches. 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 loathe to quash the notifications..... The order or action, if ultra vires the power, becomes void and it does not confer any right. But the action need not necessarily be set at naught in all events. Though the order may be void, if the party does not approach the Court within reasonable time, which is always a question of fact and have the order invalidated or acquiesced or waived, the discretion of the Court has to be exercised in a reasonable manner. When the discretion has been conferred on the Court, the Court may in appropriate case decline to grant the relief, even if it holds that the order was void. The net result is that extraordinary jurisdiction of the Court may not be exercised in such circumstances...

21. Relying on the above said judgments, the Hon''ble Supreme Court in *Swaran Lata etc. vs. State of Haryana & Ors.* has observed "when a person challenges

section 4(1) Notification on any ground, it should be challenged within a reasonable period, and if the acquisition is challenged at a belated stage, the petition deserves to be dismissed only on this count."

22. The discussion of the above said judgments will make it clear that even if the original owner happens to be the person challenging the notification u/s 4(1) of the Land Acquisition Act, 1894, he should have approached the court within a reasonable time and belated approach to the court will warrant dismissal of the writ petition on the ground of laches. In this case Section 4(1) notification was issued in 1983. Award enquiry was completed and the award was passed on 30.03.1985. The challenge to the 4(1) notification has been sought to be made after 22 years. For inaction for such a long period, there is no explanation. Apart from laches, the facts show the dilatory tactics and the ingenuous attempts made to challenge the acquisition proceedings. In fact, the petitioner who has got the sale deed 10 years after an award was passed, seems to have chosen to play a gambling. The ratio decided in the above mentioned judgments squarely get attracted to the case on hand. In fact there are sufficient materials to show that the attempt made by the petitioner is to trouble the water and try to fish out of it. The attempt made by the petitioner shall not succeed and the resultant position shall be the dismissal of the writ petition. For all the reasons stated above, this court comes to the conclusion that there is no merit in the writ petition and the writ petition deserves dismissal. Accordingly, the writ petition is dismissed. However, there shall be no order as to costs.