

(2014) 02 MAD CK 0096

In the Madras High Court

Case No : Writ Petition No's. 27738, 27739 and 27740 of 2012

G. Chitra

APPELLANT

Vs

The Government of Tamil Nadu

RESPONDENT

Date of Decision : 21-02-2014

Acts Referred:

Constitution of India, 1950 — Article 226 300A 32

Land Acquisition Act, 1894 — Section 10 11 11(1) 16 2

Citation : (2014) 2 CTC 11 : (2014) 8 MLJ 297 : (2014) WritLR 515

Hon'ble Judges : V. Dhanapalan, J

Bench : Single Bench

Advocate : A.R.L. Sundaresan, for Mr. P. Srinivas, for the Appellant; S. Gomathinayagam, A.A.G. for Mr. R. Vijayakumar, for R1 and R2 A.G.P. and Mr. R.V. Babu for R3, for the Respondent

Final Decision : Partly Allowed

Judgement

V. Dhanapalan, J.—The petitioner has filed these Writ Petitions, challenging the Notifications u/s 4(1) of the Land Acquisition Act, Declarations u/s 6 and the Awards in Nos. 2 of 1994, 1 of 1995 and 5 of 1997. Since all these three Writ Petitions involve one and the same issue, they are being disposed of in common.

2. The facts put forth by the petitioner in the affidavit, would run thus:

2.1. The lands comprised in Survey Number 410/1, admeasuring an extent of 2.79.0 Hectares in Vilankurichi Village, Coimbatore District originally belonged to her father namely, Mr. G. Govindaswamy Naidu, by virtue of a registered partition deed, dated 09.12.1959, vide Doc. No. 7088 of 1959. Her father, during his life time, executed a registered Will dated 29.01.1988 in Doc. No. 38 of 1988, thereby bequeathing the entire properties in her favour and creating a life estate in favour of her mother, Prema Govindaswamy. her father died on 15.05.1992 and is survived by her and her mother. After the demise of her father, the above said Will came into force and the petitioner derived the title over the property by virtue of the Will. However, due to uncertainty and vagueness of the terms of the

Will, the petitioner filed a Civil Suit in O.S. No. 797 of 2001 on the file of District Munsif, Coimbatore, against her mother for the relief of Declaration that she has got absolute right over the properties of her deceased father Mr. G. Govindaswamy Naidu, subject to life interest in favour of her mother as per the Will, dated 29.01.1988. The Suit filed by her was decreed on 26.09.2001 and she became the absolute owner of the above mentioned properties and other properties of her deceased father and is in absolute possession and peaceful enjoyment of the property.

2.2. Her deceased father had no knowledge about the land acquisition proceedings initiated by the respondents on account of their blatant illegalities in acquiring the lands. Simultaneously, land reforms proceedings had been initiated under the Tamil Nadu Land Reforms (FCL) Act, 1961 against the holdings of her deceased father. Pursuant to the direction issued by the Tamil Nadu Land Reforms Special Appellate Tribunal dated 13.06.1994, the Assistant Commissioner (Land Reforms), Coimbatore, after conducting a fresh enquiry, passed an order vide Ref. No. 6140/87D, dated 08.05.1997, holding that the subject matter of the lands are the personal holdings of the petitioner's deceased father.

2.3. Aggrieved by the order of the Assistant Commissioner (Land Reforms), Coimbatore, PSG Ganga Naidu and Sons Charities, filed a Revision Petition before the Land Commissioner and the same was dismissed on 10.03.2000. Thereafter, the Trust filed W.P. No. 44989 of 2002 before this Court challenging the order passed by the Assistant Commissioner and Land Commissioner. The Writ Petition filed by the Trust was dismissed by this Court on 03.12.2010 and W.A. No. 501 of 2011 filed by the said Trust was also dismissed by a Division Bench on 30.03.2011. Pursuant to the above proceedings, the petitioner approached the revenue authorities for mutation of revenue records. At that point of time, the petitioner came to know about the acquisition proceedings initiated by the respondents and the passing of Awards in Award Nos. 2/1994, 1/1995 and 5/1997.

2.4. In Award No. 2/1994, it is stated that the 1st respondent has approved draft notification u/s 4(1) of the Land Acquisition Act, in short, "the Act", on 05.03.1991 vide G.O. Ms. No. 306, Housing and Urban Development Department. The 1st respondent had decided to acquire the land for public purpose of construction of houses under the Ganapathy Neighbourhood Scheme Phase II. Pursuant to the issuance of the Government Order, the 1st respondent published Section 4(1) Notification in the Tamil Nadu Government Gazette on 20.03.1991. The substance of the Notification was also claimed to have been published in Tamil Dailies namely, "Thee Kathir" on 01.05.1991 and "Pirpagal" on 02.05.1991. The Land Acquisition Authority is said to have effected local publication on 30.05.1991. Section 5(A) enquiry was conducted by the Special Tahsildar, Land Acquisition and the draft declaration u/s 6 of the Act was issued in G.O. Ms. No. 269, Housing and Urban Development Department, dated

26.05.1992. The Draft Declaration was published in the Tamil Nadu Government Gazette on 28.05.1992 and paper publication was effected in "Makkal Kural" and "Dina Thudhu" on 29.05.1992. The local publication of Section 6 Declaration was made on 29.05.1992. The draft declaration prepared u/s 7 of the Act was approved by the Government on 30.09.1992. Notices have been issued u/s 9(3) and Section 10 of the Act to PSG Ganga Naidu Trust and Krishna Naidu for award enquiry. Thereafter, the award was passed in exercise of power conferred u/s 11 of the Act on 25.04.1994 without hearing the interested persons/land owners.

2.5. As far as Award No. 1/1995 is concerned, it is stated that the 1st respondent's draft notification u/s 4(1) of the Act was approved in G.O. Ms. No. 46, Housing and Urban Development Department, dated 05.02.1992. The 1st respondent had decided to acquire the land for public purpose of construction of houses under the Ganapathy Neighbourhood Scheme Phase II. In pursuance of the issuance of Government Order, the 1st respondent published Section 4(1) Notification in the Tamil Nadu Government Gazette on 26.02.1992. The substance of the Notification was also claimed to have been published in Tamil dailies namely, "Namathu M.G.R." on 25.02.1992. The land acquisition authority is said to have effected local publication on 20.04.1992. The father of the petitioner died on 16.05.1992. While being so, it is further mentioned in the Award that Section 5(A) enquiry was conducted by the Special Tahsildar, Land Acquisition, as if the land owner G. Govindaswamy Naidu is alive and the draft declaration u/s 6 of the Act was issued in G.O. Ms. No. 297, Housing and Urban Development Department, dated 15.04.1993. The Draft Declaration was published in the Tamil Nadu Government Gazette on 16.04.1993 and paper publication was effected in "Makkal Kural" on 16.04.1993 and in "Adirstam" on 17.04.1993. The local publication of Section 6 Declaration was made on 19.04.1993. The draft declaration prepared u/s 7 of the Act was approved by the Government on 17.03.1994. Notices have been issued under Sections 9(3) and 10 of the Act against the dead person G. Govindaswamy Naidu for award enquiry. Thereafter, the award was passed in exercise of power conferred u/s 11 of the Act on 18.04.1995 without impleading the legal heirs of the deceased G. Govindaswamy Naidu and affording them an opportunity of being heard in the above matter.

2.6. In Award No. 5/1997, it is stated that the 1st respondent has approved draft notification u/s 4(1) of the Act on 28.02.1994 vide G.O. Ms. No. 215, Housing and Urban Development Department. The 1st respondent had decided to acquire the land for public purpose of construction of houses under the Ganapathy Neighbourhood Scheme Phase II. Pursuant to the issuance of Government Order, the 1st respondent had published Section 4(1) land acquisition Notification in the Tamil Nadu Government Gazette No. 15A dated 20.04.1994 as Notification No. 11(2)/Hou/1437/94. The substance of the Notification was also claimed to have been published in Tamil Dailies namely, "Dhinamalar" and "Pirpagal" on 23.04.1994. The Land Acquisition Authority is said to have effected local publication on 10.06.1994. Section 5(A) enquiry was conducted by the Special

Tahsildar, Land Acquisition and the draft declaration u/s 6 of the Act was issued in G.O. Ms. No. 540, Housing and Urban Development Department, dated 06.06.1995. The Draft Declaration was published in the extraordinary issue of Part II section 2 of Tamil Nadu Government Gazette issue No. 27, dated 07.06.1995 as notification No. 11(2)/Hou/2013(b)/95 and paper publication was effected in "Dhina Thanthi" and "Makkal Kural" on 09.06.1995. The local publication of Section 6 Declaration was made on 10.06.1995. The draft declaration prepared u/s 7 of the Act was approved by the Government on 07.12.1996. Notices have been issued u/s 9(3) and Section 10 of the Act in the name of the deceased G. Govindaswamy Naidu for award enquiry.

Thereafter, the award was passed in exercise of power conferred u/s 11 of the Act on 19.05.1997 without impleading the legal heirs of late G. Govindaswamy Naidu and affording them an opportunity of being heard in the above matter.

2.7. The acquisition proceedings initiated by the respondents is grossly in violation of mandatory provisions contained in the Act and without impleading the petitioner in the place of the deceased G. Govindaswamy Naidu during the time of 5A enquiry and on account of the same, the entire acquisition proceedings is a nullity and non est in law. The non-compliance of mandatory procedures by the respondents is an illegality.

2.8. Section 3(b) defines the phraseology "person interested" as all persons claiming interest in compensation to be made on account of the acquisition of the land under the Act; and a person shall be deemed to be interested in land, if he is interested in an easement affecting a land. Therefore, it is mandatory on the part of the acquisition authority to issue notice of 5A enquiry to the legal heirs of Late G. Govindasamy Naidu and hear their objections if any, as they are the land owners and interested persons in the land. Had the notification been issued in the petitioner's name after the death of her father on 16.05.1992, the petitioner would have objected for the land being acquired as contemplated u/s 5A of the Act. Hence, the apparent error committed by the respondent in not giving an opportunity to the petitioner to raise objections has deprived the petitioner's valuable right of objection u/s 5(A) of the Act. Therefore, the entire land acquisition proceedings are illegal at the stage of inception itself.

2.9. The substance of Section 4(1) notification was published in two Tamil Dailies, "Namathu M.G.R." and "Pirpagal", which are not widely circulated publications either in the concerned District or in the State of Tamil Nadu. The very purpose of causing publication of notification in the newspaper is to enable the land owners to acquire knowledge about the proposed acquisition of their lands, therefore, the legislature in its wisdom has thought it fit to incorporate a provision in the Act for publishing notification in newspapers having wide and prominent circulation. The act of authorities effecting publication in the newspapers which did not have even miniscule circulation in that locality is in violation of Section 4(1) of the Act.

2.10. Rule 2 of the Tamil Nadu Land Acquisition Rules contemplates that the substance of Section 4(1) notification shall be made in Form A at convenient places in the localities and copies thereof fixed in the office of the Collector and the Tahsildar. The material evidence on record does not reflect that the authorities have caused local publication as per the procedure laid down under Rule 2 and complied with and completed the Section 4(1) mode of publication. Under these circumstances, Section 4(1) notification issued by the respondents is incomplete. Section 5(A) proceedings under this context cannot legally be commenced. The respondent has miserably failed to cause local publication as per Rule 2, which deprives the petitioner's valuable right to object to the proposed acquisition proceedings. The main object of effecting local publication is that the persons who were in physical possession of the lands will have knowledge about the Land Acquisition proceedings even though they failed to acquire knowledge through other modes of publication. Hence, failure to cause local publication in the manner known to law would vitiate the acquisition proceedings.

2.11. On account of incomplete notification issued by the authorities, the petitioner was not in a position to raise her valid objection for land acquisition proceedings before the Land Acquisition Officer, u/s 5A of the Act. The authorities have miserably failed to conduct proper enquiry u/s 5A to find out real owners of the property in respect of lands comprised in S. No. 407/1, 407/2 and 408, which is illegal and vitiates the entire acquisition proceedings.

2.12. As per Section 5 of the Act, the appropriate Government should take final decision on the basis of the enquiry conducted by the Land Acquisition Officer. The Special Tahsildar is not the competent authority to take a final decision in the matter of objections made by the land owners in Section 5(A) enquiry. In the case on hand, the appropriate Government has not taken any final decision on the objections made by the land owners and hence, the entire 5A proceedings are illegal.

2.13. Due to the apparent error committed by the authorities, the petitioner has not been provided with the opportunity of objection u/s 5A. The conduct of the respondents in calling for objections from the dead person G. Govindaswamy Naidu is an illegality and not curable in nature. The petitioner is in absolute possession and peaceful enjoyment of the lands comprised in S. No. 407/1, 407/2 and 408 and the respondents have not taken physical possession of the properties. The so-called acquired lands have not been utilized for the purpose for which they were acquired even though the award was passed in the year 1994. Therefore, the subject lands have not been vested with the respondent as per Section 16 of the Act.

2.14. The respondent has not issued any award enquiry notice as contemplated u/s 9(2) read with Section 45 of the Act. Therefore, the passing of the Award u/s 11 of the Act holding that the ownership of the property is in dispute and depositing the award amount in Civil Court u/s 31(2) and Section 30 of the Act is

nothing but an attempt to subvert the mandatory compliance of the Act. Even the Award was passed without obtaining prior approval of the appropriate government u/s 11(1) of the Act. Hence, the Award passed by the respondent bristles with illegalities and serious infirmities.

2.15. Having no other alternative remedy, the petitioner has approached this Court for the above relief.

3. Respondents 1 to 3 have filed separate counter affidavits, stating, on similar lines, as follows:

3.1. The Executive Engineer and Administrative Officer, Coimbatore Housing Unit, Coimbatore has requested for acquisition of 874.64.0 Hectares of land in Village No. 13, Vilankurichi for the construction of houses under Ganapathy Neighbourhood Scheme, Phase-II. The lands under acquisition in Vilankurichi Village have been formed into 72 blocks for procedural convenience.

3.2. The Draft Notification u/s 4(1) of the Act was approved by the Government in G.O. Ms. No. 306, Housing and Urban Development Department, dated 05.03.1991 and the same was published in Tamil Nadu Government Gazette, supplement to Part II Section 2, dated 20.03.1991. The substance of the notification was published in two Tamil Dailies viz., "Theekadhir" on 01.05.1991 and "Pirpagal" on 02.05.1991 which are having wide circulation in that area and locality publication was also made in the Village on 30.05.1991.

3.3. In exercise of the powers conferred on the Land Acquisition Officer, the enquiry u/s 5(A) of the Act was conducted on 07.08.1991 after observing usual formalities and also after due publication and service of the required notices under the Act. During the course of enquiry, some of the notified persons appeared for enquiry and filed their objections. The objections were forwarded to the requisitioning body (viz) Executive Engineer and Administrative Officer, Coimbatore Housing Unit, Coimbatore. Remarks of the Executive Engineer and Administrative Officer, Coimbatore Housing Unit were obtained and also communicated to the interested persons and their acknowledgments were obtained. The Land Acquisition Officer and Special Tahsildar (Land Acquisition), Housing Scheme, Unit-III has drawn proceedings u/s 5A(2) of the Act recommended for overruling the objections. The copies of the proceedings were also communicated to the land owners.

3.4. The Government, after considering the objections raised by the land owners at the time of 5(A) enquiry, had overruled and approved the Draft Declaration u/s 6 of the Act in G.O. Ms. No. 269, Housing and Urban Development Department, dated 26.05.1992 and it was published in the Tamil Nadu Government Gazette Extraordinary Part II Section 2, dated 28.05.1992. The substance of the Declaration was also published in "Makkalkural" and "Dhinathoothu" on 29.05.1992 and also in the locality on 29.05.1992. The Draft Declaration u/s 7 of the Act was approved by the Government in their letter No. 39054/-LA3(2)/92-2, Housing and Urban Development Department, dated 01.09.1992

and published in the Tamil Nadu Government Gazette in Part II Section 2 Supplement-A, dated 30.09.1992.

3.5. The notices under Sections 9(1) and 10 of the Act were published in the convenient places and necessary certificates were obtained. The notices under Sections 9(3) and 10 of the Act were served on the land owners and interested persons and their acknowledgments were obtained. Award enquiry u/s 11 of the Act was conducted by the Land Acquisition Officer on 25.04.1994. In respect of S.F. No. 410/1, M/s. PSG Ganga Naidu and Sons Trust and Thiru Krishnan Naidu are the notified persons. Thiru Ramachandran, S/o. Govindasamy Naidu appeared for Award enquiry on behalf of M/s. PSG Ganga Naidu & Sons Trust. He has stated that the above lands were gifted to the above Trust by Thiru. PSG Govindasamy S/o. Ganga Naidu in 1978. But he has not produced any documentary evidence in support of his claim. Another notified person Thiru Krishnan Naidu has not appeared for enquiry. The Award was pronounced in Award No. 2/94, dated 23.05.1994. Since the ownership and apportionment of compensation for acquisition of the lands could not be decided, the compensation for the entire land of 2.79.0 Hectares in S.F. No. 410/1, was ordered to be deposited in the Civil Court u/s 31(2) and 30 of the Act. The compulsory possession of lands in S.F. No. 410/1 etc. was taken by the Tahsildar, Coimbatore North Taluk u/s 47 of the Act and handed over to the Tamil Nadu Housing Board on 09.12.1994. Now, after a lapse of 18 years from the date of taking possession of the lands, the petitioner has filed the present Writ Petition.

3.6. The land Acquisition proceedings in respect of S.F. No. 444 of Vilankurichi Village, Coimbatore North Taluk, Coimbatore District were conducted in a proper manner as envisaged in the Land Acquisition Act, 1894 as amended in 1984 and as such Award was pronounced in Award No. 5/97, dated 09.05.1997.

3.7. Thiru. G.R. Karthikeyan, Managing Trustee of M/s. PSG Ganga Naidu & Sons Charitable Trust appeared for Award enquiry conducted u/s 11 of the Act and produced a document No. 2975/78, dated 28.11.1978 executed by the father of the petitioner Thiru. G. Govindasamy Naidu. According to the above document, the land in S.F. No. 444 measuring 1.83 acres belonged to the above Trust. However, the other persons having interest on the above land did not appear for Award enquiry. Hence, the entire compensation was ordered to be deposited in the Civil Court under Sections 30 and 31(2) of the Act. From the averment of the petitioner, it is evident that the petitioner is having right over the land in S.F. No. 444 as per the suit filed by her which was decreed on 26.09.2011.

3.8. The Land Acquisition proceedings in respect of S.F. No. 444 etc. of Vilankurichi Village initiated in L.A. No. 10/88 were intact and time bound. The Draft notification u/s 4(1) of the Act was approved by the Government in G.O. Ms. No. 215, Housing and Urban Development Department, dated 28.02.1994 and published at page 8 of part II Section 2 of the Tamil Nadu Government Gazette Issue No. 15A, dated 20.04.1994 as Notification No. II(2)/Hou/1437/94. The above Notification was published in two Tamil Dailies, viz., "Dhinamalar" and

"Pirpagal" on 23.04.1994 which are having wide circulation in that area. The substance of the Notification was also published in the locality on 10.06.1994. In exercise of the powers conferred on the Land Acquisition Officer, an enquiry u/s 5(A) of the Act was conducted on 12.12.1994. The Draft Declaration u/s 6 of the Act was approved by the Government in G.O. Ms. No. 540, Housing and Urban Development Department, dated 06.06.1995 and published in the extraordinary issue of Part II Section 2 of Tamil Nadu Government Gazette Issue No. 297, dated 07.06.1995 as Notification No. II(2)/Hou/2013(b)/95. The substance of the Notification was published in "Thinathanthi" and "Makkalkural" on 09.06.1995 and in the locality on 10.06.1995. As such, there are no illegalities and legal infirmities as stated by the petitioner.

4. Mr. A.R.L. Sundaresan, learned Senior Counsel for the petitioner would contend that Section 4(1) notification has not been issued in the name of the persons interested as per Section 3(b) of the Act, which deprives the petitioner of the right to know about the acquisition proceedings itself. He would further contend that the local publication of Section 4(1) notification had not been made as per Rule 2 of Land Acquisition Rules, which stipulate that local publication should be effected in Form A and the same should be affixed in convenient places. He would also submit that the appropriate Government has not passed any final order u/s 5A of the Act, after considering the objections made by the land owners and hence, the enquiry proceedings u/s 5A are illegal.

In support of his case, the learned Senior Counsel has relied on the following decisions:

(i) Hindustan Petroleum Corporation Ltd. Vs. Darius Shapur Chenai and Others,

6. It is not in dispute that Section 5A of the Act confers a valuable right in favour of a person whose lands are sought to be acquired. Having regard to the provisions contained in Article 300A of the Constitution, the State in exercise of its power of eminent domain may interfere with the right of property of a person by acquiring the same but the same must be for a public purpose and reasonable compensation therefor must be paid.

7. Indisputably, the definition of public purpose is of wide amplitude and takes within its sweep the acquisition of land for a corporation owned or controlled by the State, as envisaged under sub-clause (iv) of clause (f) of Section 3 of the Act. But the same would not mean that the State is the sole judge therefor and no judicial review shall lie. (See Jilubhai Nanbhai Khachar v. State of Gujarat)

15. Section 5A of the Act is in two parts. Upon receipt of objections, the Collector is required to make such further enquiry as he may think necessary whereupon he must submit a report to the appropriate Government in respect of the land which is the subject-matter of notification u/s 4(1) of the Act. The said report would also contain recommendations on the objections filed by the owner of the land. He is required to forward the records of the proceedings held by him together with the report. On receipt of such a report together with the records of

the case, the Government is to render a decision thereupon. It is now well settled in view of a catena of decisions that the declaration made u/s 6 of the Act need not contain any reason. (See *Kalumiya Karimmiya v. State of Gujarat* 15 and *Delhi Admn. v. Gurdip Singh Uban* 16.)

16. However, considerations of the objections by the owner of the land and the acceptance of the recommendations by the Government, it is trite, must precede a proper application of mind on the part of the Government. As and when a person aggrieved questions the decision-making process, the court in order to satisfy itself as to whether one or more grounds for judicial review exist, may call for the records whereupon such records must be produced. The writ petition was filed in the year 1989. As noticed hereinbefore, the said writ petition was allowed. This Court, however, interfered with the said order of the High Court and remitted the matter back to it upon giving an opportunity to the parties to raise additional pleadings.

(ii) *Royal Orchid Hotels Limited and Another Vs. G. Jayarama Reddy and Others*,

25. Although the Framers of the Constitution have not prescribed any period of limitation for filing a petition under Article 226 of the Constitution of India and the power conferred upon the High Court to issue to any person or authority including any Government, directions, orders or writs including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari is not hedged with any condition or constraint, in the last 61 years the superior courts have evolved several rules of self-imposed restraint including the one that the High Court may not enquire into belated or stale claim and deny relief to the petitioner if he is found guilty of laches. The principle underlying this rule is that the one who is not vigilant and does not seek intervention of the Court within reasonable time from the date of accrual of cause of action or alleged violation of the constitutional, legal or other right is not entitled to relief under Article 226 of the Constitution. Another reason for the High Courts refusal to entertain belated claim is that during the intervening period rights of third parties may have crystallised and it will be inequitable to disturb those rights at the instance of a person who has approached the Court after long lapse of time and there is no cogent explanation for the delay. We may hasten to add that no hard-and-fast rule can be laid down and no straightjacket formula can be evolved for deciding the question of delay/laches and each case has to be decided on its own facts.

(iii) *Patasi Devi Vs. State of Haryana and Others*,

"5. We have heard the learned counsel for the parties and scanned the record. We shall first consider the question whether the High Court was right in non-suiting the appellant without examining the merits of her challenge to the acquisition proceedings? For this purpose, it will be apposite to note that in the counter-affidavit filed on behalf of Respondents 1 and 3 before the High Court it was nowhere pleaded that possession of the appellants land and house was taken by the particular official/officer on a particular date and was handed over

to the Estate Officer, HUDA, Rohtak. Not only this, no document was produced evidencing dispossession of the appellant. This is the reason why the High Court did not record a finding that possession of the appellants land had been taken after passing of the award.

6. In the counter-affidavit filed before this Court, Respondents 1 and 3 have, for the first time, averred that possession of the acquired land was handed over to Estate Officer, HUDA, Rohtak on the date of award and as per the official assessment report the construction had been raised after the issuance of notification u/s 4. This statement is contained in Para 6 of the counter-affidavit, which is reproduced below:

6. That the award related to the abovesaid notification was announced on 9-12-2009 and the possession was handed over to Estate Officer, HUDA, Rohtak on the same day. It is relevant to mention here that as per the official assessment report of the constructed area regarding the abovesaid notification the land of the petitioner was vacant at the time of (sic issuance of notification) u/s 4 and the construction has been raised after the survey and issuance of the notification u/s 4. However, since it is also subsequent to declaration of the area as controlled area and the same is without permission and unauthorised one.

7. In the separate counter-affidavit filed by the Estate Officer, HUDA, Rohtak (Respondent 2) before this Court, a similar averment has been made albeit without disclosing the name of the person who is said to have delivered possession of the acquired land to him on the date of the award. Not only this, while making that averment in Para 5(v) of the counter-affidavit, the officer has used white fluid to score out something recorded after the words handed over to the answering respondent. By doing so the officer concerned has tried to hide the truth from this Court. That apart, what is most surprising is that neither before the High Court nor before this Court the official respondents have produced any document to show that actual or even symbolic possession of the acquired land was taken by the particular officer/official and the same was handed over to the particular officer of HUDA. Therefore, there is no escape from the conclusion that Respondents 1 to 3 have failed to discharge the onus to prove that after the passing of the award, possession of the acquired land had been taken and delivered to the Estate Officer, HUDA.

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

59. Before parting with this aspect of the case, we consider it proper to deal with the two judgments relied upon by Dr. Dhawan in support of his submission that the declaration issued u/s 6(1) is conclusive and the satisfaction recorded by the competent authority cannot be subjected to judicial review. In *Somawanti vs. State of Punjab* (supra), after analyzing the relevant provisions, the majority of the Constitution Bench observed:

The Scheme of the Act is that normally the provisions of Section 5A have to be complied with. Where, in pursuance of the provisions, objections are lodged,

these objections will have to be decided by the Government. For deciding them, the Government will have before it the Collector's proceedings. It would, therefore, be clear that the declaration that a particular land is needed for a public purpose for a company is not to be made by the Government arbitrarily, but on the basis of material placed before it by the Collector. The provision of sub-section (2) of Section 5A make the decision of the Government on the objections final while those of sub-section (1) of Section 6 enable the Government to arrive at its satisfaction. Sub-section (3) of Section 6 goes further and says that such a declaration shall be conclusive evidence that the land is needed for a public purpose or for a company.

The Government has to be satisfied about both the elements in the expression "needed for a public purpose or a company". Where it is so satisfied, it is entitled to make a declaration. Once such a declaration is made sub-section (3) invests it with conclusiveness. That conclusiveness is not merely regarding the fact that the Government is satisfied but also with regard to the question that the land is needed for a public purpose or is needed for a Company, as the case may be. Then again, the conclusiveness must necessarily attach not merely to the need but also to the question whether the purpose is a public purpose or what is said to be a company is a company. There can be no "need" in the abstract. It must be a need for a "public purpose" or for a company.

The Act has empowered the Government to determine the question of the need of land for a public purpose or for a company and the jurisdiction conferred upon it to do so is not made conditional upon the existence of a collateral or extraneous fact. It is the existence of the need for a public purpose which gives jurisdiction to the Government to make a declaration u/s 6(1) and makes it the sole judge whether there is in fact a need and whether the purpose for which there is that need is a public purpose. The provisions of sub-section (3) preclude a court from ascertaining whether either of these ingredients of the declaration exists.

(v) Paul Sudhindran Vs. The State of Tamiil Nadu and Others, :

15. A question may arise that land acquisition proceedings was initiated in 1989 and declaration u/s 6 had been made in 1990, and award has been made in 1993, and therefore, the writ petition filed in 1994 is hit by principles of laches. However, in the peculiar facts and circumstances of the present case, I do not think that the writ petition is hit by the principles of laches. The land was acquired for the purpose of construction of a housing complex by the Housing Board. Undisputedly physical possession of the property in question had not been taken by the Housing Board. On the other hand by the time, the Writ Petition was filed, the Housing Complex for the benefit of the employees of Reserve Bank had been completed and possession had been handed over through a long drawn process in view of the dispute between the purchasers and the builder. Since the purchasers were continuing in their struggle to protect their right in different Forums, which was to the knowledge of Housing Board as well as the State

Government, in the absence of any prejudice caused to the respondents, it cannot be said that the writ petition is barred by the principles of laches or acquiescence. In this connection it is to be noted that even at one stage the Housing Board itself, on whose request the land has been acquired, had indicated that the present disputed property namely, R.S. No. 3189, may be excluded from the land acquisition. The State Government, however, raised certain query and only on the basis of such query raised by the State Government, the Housing Board changed its decision and thereafter the award was passed. It is thus obvious that the matter was under consideration and in such view of the matter the fact that the Association had not filed the writ petition immediately cannot be considered as a point to negative the claim of the petitioner.

(vi) Savithiriammal Vs. The State of Tamil Nadu,

5. This Court, in M. Muthuswamy Kandiar Vs. State of Tamil Nadu, ; V. Devaraj, V. Sundararajan, V. Damodarasamy, Dr. V. Ramachandran and V. Lakshminarayanamsami Vs. The State of Tamil Nadu, ; Miss. Asiya Mariyan Vs. The Secretary to Government of Tamil Nadu. Adi- Dravidar and Tribal Welfare Department, Fort St. George, Madras and another, ; and in series of other decisions, held that Notice/Notification issued in the name of dead person and the proceedings with respect to the said lands cannot be sustained. By applying the said principle, we accept the contention of the learned counsel for the appellant and quash the Notification issued u/s 4(1), dated 14.06.1995.

Consequently, Writ Appeal is allowed. No costs. Connected Miscellaneous Petition stands closed. It is made clear that the respondents are free to proceed with the acquisition, if they so desire, by initiating fresh proceedings in accordance with law.

(vii) Smt. Leelavathi Vs. The State of Tamil Nadu,

14. Therefore, applying the above said judgment to the facts of the present case, it is clear from the records that when 5-A enquiry notice was served on the sister of the petitioner, viz., Kuttiammal on 14.05.1997, an endorsement was made to the effect that Karamadai Naicker died and thereafter, notice serviced on his daughter, being his legal heir. Therefore, it can be clearly inferred that at the time when the 5-A enquiry was about to start and when notice for 5-A enquiry was served, the authorities were informed about the death of the original owner and similar notices have been served on the petitioner and also on the other daughter of the original owner and having known about the factum of death of the owner, the respondents ought to have taken steps to either rectify 4(1) notification or issue fresh 4(1) notification. Even though the subsequent 6 declaration has been issued in the name of the petitioner, inasmuch as 4(1) notification has been allowed to continue in the name of dead person in spite of the information given to the respondents about the death of the original owner, the 4(1) notification having become non est in law, the subsequent proceedings cannot be validated.

5. Conversely, Mr. S. Gomathinayagam, learned Additional Advocate General appearing for respondents 1 and 2, and Mr. R.V. Babu, learned counsel appearing for the 3rd respondent would submit in one voice that the land acquisition proceedings in respect of the petitioner's lands of Vilankurichi Village were completed in the year 1994 itself for a public purpose after following all the mandatory procedures under the Act and compulsory possession of the lands was taken by the Tahsildar and Taluk Magistrate, Coimbatore North Taluk u/s 47 of the Act and handed over to Tamil Nadu Housing Board on 09.12.1994 and, therefore, the proceedings of the respondents are not to be faulted with. In support of their case, the learned counsel have relied on a decision reported in Tamil Nadu Housing Board, Chennai Vs. M. Meiyappan and Others, , wherein it is held as under:

19. Moreover, in relation to the land acquisition proceedings, the Court should be loathe to encourage stale litigation as the same might hinder projects of public importance. The Courts are expected to be very cautious and circumspect about exercising their discretionary jurisdiction under Article 226 or Article 32 of the Constitution if there has been inordinate unexplained delay in questioning the validity of acquisition of land. In this regard, it will be useful to advert to the observations made in P. Chinnanna and Others Vs. State of A.P. and Others, , wherein, the Supreme Court had observed thus:

In fact, in relation to acquisition proceedings involving acquisition of land for public purposes, the court concerned must be averse to entertain writ petitions involving the challenge to such acquisition where there is avoidable delay or laches since such acquisition, if set aside, would not only involve enormous loss of public money but also cause undue delay in carrying out projects meant for general public good.

6. I have heard the learned counsel for the parties and also gone through the multitudinous records, including the citations relied upon.

7. On going through the records, the facts that would remain are that pursuant to the requisition made by the requisitioning body, namely, Executive Engineer and Administrative Officer, Coimbatore Housing Unit, Coimbatore, third respondent herein, for acquisition of 874.64.0 Hectares of land in Vilankurichi village for construction of houses under Ganapathy Neighbourhood Scheme, Phase-II, the lands under acquisition, including that of the petitioner, have been formed into 72 blocks for procedural convenience. For that purpose, the Notification u/s 4(1) of the Act was approved by the Government in G.O. Ms. No. 306, Housing and Urban Development Department, dated 05.03.1991, and the same was published in Tamil Nadu Government Gazette, supplement to Part II Section 2, dated 20.03.1991. The substance of the notification was published in two Tamil Dailies viz., "Theekadhir" on 01.05.1991 and "Pirpagal" on 02.05.1991, which are having wide circulation in that area and local publication was also made in the Village on 30.05.1991. Thereafter, in exercise of the powers conferred on the Land Acquisition Officer, the enquiry u/s 5(A) was conducted on

07.08.1991, after observing usual formalities and also after due publication and service of the required notices under the Act. During the course of enquiry, some of the notified persons appeared for enquiry and filed their objections. The objections were forwarded to the requisitioning body, viz., Executive Engineer and Administrative Officer, Coimbatore Housing Unit, Coimbatore, third respondent herein. Remarks of the Executive Engineer and Administrative Officer, Coimbatore Housing Unit, were obtained and also communicated to the interested persons and their acknowledgements were obtained. The Land Acquisition Officer and Special Tahsildar (Land Acquisition), Housing Scheme, Unit-III, had drawn proceedings u/s 5A(2) and recommended for overruling the objections. Copies of the proceedings were also communicated to the land owners.

8. Subsequent to the said recommendations of the Land Acquisition Officer, the Government, after considering the objections raised by the land owners at the time of 5-A enquiry, overruled the said objections and approved the Declaration u/s 6 of the Act in G.O. Ms. No. 269, Housing and Urban Development Department, dated 26.05.1992. It was published in Tamil Nadu Government Gazette Extraordinary Part II Section 2, dated 28.05.1992. The substance of the Declaration was published in "Makkalkural" and "Dhinathoothu" on 29.05.1992 and also effected in the locality on the same day. u/s 7, the Government approved the order for acquisition of land vide their letter No. 39054/-LA3(2)/92-2, Housing and Urban Development Department, dated 01.09.1992, and the same was published in Tamil Nadu Government Gazette in Part II Section 2 Supplement-A, dated 30.09.1992.

9. Notices under Sections 9(1) and 10 of the Act were published in the convenient places and necessary certificates were obtained. Notices under Sections 9(3) and 10 were served on the land owners and the interested persons and their acknowledgements were also obtained. Award enquiry u/s 11 was conducted by the Land Acquisition Officer on 25.04.1994. In respect of S.F. No. 410/1, M/s. PSG Ganga Naidu & Sons Trust and one Krishnan Naidu were the notified persons. One Ramachandran, s/o. Govindasamy Naidu appeared for Award enquiry on behalf of M/s. PSG Ganga Naidu & Sons Trust. He stated that the said lands were gifted to the above Trust by PSG Govindaswamy s/o. Ganga Naidu in 1978, but, he did not produce any documentary evidence in support of his claim. The other notified person Krishnan Naidu did not appear for enquiry. Thereafter, the Award was pronounced in Award No. 2/94, dated 23.05.1994. Since the ownership and apportionment of compensation for acquisition of the lands could not be decided, compensation for the entire land of 2.79.0 Hectares in S.F. No. 410/1, was ordered to be deposited in Civil Court under Sections 30 and 31(2) of the Act. The compulsory possession of lands was taken over by the Tahsildar, Coimbatore North Taluk u/s 47 and handed over to Tamil Nadu Housing Board on 09.12.1994.

10. Coming to the case of the petitioner, the lands in question originally belonged

to her father, namely, Mr. G. Govindaswamy Naidu, by virtue of a registered partition deed, dated 09.12.1959, vide Doc. No. 7088 of 1959; he, during his life time, executed a registered Will, dated 29.01.1988, in Doc. No. 38 of 1988, bequeathing the entire properties in her favour and creating a life estate in favour of her mother Prema Govindaswamy; he died on 15.05.1992; after his demise, the above said Will came into force and she derived the title over the property; however, due to uncertainty and vagueness of the terms of the Will, she filed a Civil Suit in O.S. No. 797 of 2001 on the file of District Munsif Court, Coimbatore, against her mother for the relief of Declaration that she had got absolute right over the properties of her deceased father G. Govindaswamy Naidu, subject to life interest in favour of her mother as per the Will, dated 29.01.1988; the suit filed by her was decreed on 26.09.2001 and she became the absolute owner of the lands and is in possession and enjoyment of the property. According to the petitioner, neither her deceased father nor she had knowledge of the land acquisition proceedings initiated by the respondents.

11. A perusal of the records would also reveal that land reforms proceedings were initiated at the instance of PSG Ganga Naidu and Sons Charities under the Tamil Nadu Land Reforms (FCL) Act, 1961, against the properties of the petitioner's deceased father, claiming that the lands were gifted to them. Following the direction issued by the Tamil Nadu Land Reforms Special Appellate Tribunal, dated 30.06.1994, the Assistant Commissioner (Land Reforms), Coimbatore, after conducting a fresh enquiry, passed an order vide Ref. No. 6140/87D, dated 08.05.1997, holding that the subject lands were the personal holdings of late G. Govindaswamy. Aggrieved by the order of the Assistant Commissioner (Land Reforms), Coimbatore, PSG Ganga Naidu and Sons Charities filed a Revision Petition before the Land Commissioner and the same was dismissed on 10.03.2000. Thereafter, the Charities filed W.P. No. 44989 of 2002 on the file of this Court, challenging the order passed by the Land Commissioner, to which proceedings the present writ petitioner was also a party. The said Writ Petition was dismissed by this Court on 03.12.2010 and the Writ Appeal filed thereupon vide W.A. No. 501 of 2011 was also dismissed by a Division Bench on 30.03.2011.

12. Significant it is to mention that the 4(1) Notification for acquisition of the lands was issued only when the father of the petitioner was alive. To put it clearly, the 4(1) Notification was issued on 05.03.1991 and the father of the petitioner died on 15.05.1992. When it is the case of the petitioner that her late father registered a Will dated 29.01.1988 in Doc. No. 38 of 1988, thereby bequeathing the properties in question in her favour, she ought to have approached the revenue authorities for mutation of records at once and nothing prevented her from doing so. In the absence of the same, the land owners as per the revenue records were adopted in the Notification u/s 4(1) as notified persons and they were called for enquiry under Sections 5A and 11 and, thereafter, the impugned awards were passed.

13. The land acquisition proceedings in respect of the lands in question were completed in the years 1994, 1995 and 1997 itself and compulsory possession of the said lands is claimed to have been taken over by the Tahsildar and Taluk Magistrate, Coimbatore North, u/s 47 and handed over to Tamil Nadu Housing Board on 09.12.1994. From that date onwards, the lands are in possession of Tamil Nadu Housing Board. Also, the present land acquisition proceedings were intact and time bound.

14. Since the lands were taken possession by the Board way back in 1994, this Court wanted to know from the respondents as to the actual position of the land as on date i.e., pursuant to taking over, whether the respondents have taken any steps for development of the land towards the Scheme and in order to consider the case of the petitioner for re-conveyance in case no development is made by the respondents on inaction and default of the respondents. Accordingly, the respondents have explained on record, that, after taking possession of the lands, an Area Development Scheme for 338 plots was implemented during 1998-1999 and, at the time of allotment, some of the land owners filed writ petitions and obtained stay orders and, therefore, the allotment of plots could not be made to the public and, because of the pendency of the cases, the acquired lands could not be developed further.

15. At this point, it cannot also be lost sight of that though the writ petitioner was a party to the proceedings in W.P. No. 44989 of 2002 and W.A. No. 501 of 2011 on the file of this Court against the orders of the Land Commissioner under Tamil Nadu Land Reforms Act, the same were at the instance of a third party, namely, PSG Ganga Naidu and Sons Charities, claiming the ownership of the lands, and not at the instance of the writ petitioner herein. Thereafter, the petitioner filed W.P. No. 12757 of 2003 on the file of this Court for a mandamus, to forbear the respondents from interfering with her possession in respect of the subject lands and got interim injunction on 30.10.2003. Because of the said injunction, the respondents were estopped from proceeding further in the matter and the progress of the public welfare scheme was stalled. Had the petitioner been really aggrieved over the acquisition of the lands, why did she not file the present writ petitions of certiorari at that time itself, instead of mandamus, is a matter for much concern.

16. As is well settled, in matters of land acquisition proceedings, courts should be loath to encourage stale litigation as the same might hinder the projects of public importance. The courts are expected to be very cautious and circumspect about exercising their discretionary jurisdiction under Article 226 or Article 32 of the Constitution if there is inordinate and unexplained delay in questioning the validity of acquisition of land.

17. However, in the case on hand, it is seen that an extent of land admeasuring 2.79.0 Hectares in Survey No. 410/1, in Vilankurichi Village of Coimbatore district, was notified for acquisition for a public purpose. Originally, the land was in the name of the father of the petitioner, namely, Govindaswamy Naidu, by

virtue of a registered partition deed, dated 09.12.1959, vide document No. 7088 of 1959. It is also claimed that, during his life time, a registered will was executed on 29.01.1988 in document No. 38 of 1988. 4(1) Notification was issued on 05.03.1991 and, thereafter, the father of the petitioner died on 15.05.1992.

18. It is true, the land was acquired for a public purpose, which had been proceeded with Section 4(1) Notification. The records would clearly indicate that the owner of the property died on 15.05.1992, by that time the land acquisition proceedings were completed up to the stage of Section 5A enquiry. Therefore, the proceedings initiated till the date of death of owner of the property would be valid. Thereafter, Section 6 Declarations were made on 29.05.1992 in W.P. No. 27738 of 2012; 16.04.1993 in W.P. No. 27739 of 2012 and 10.06.1995 in W.P. No. 27740 of 2012 on a dead person, namely, G. Govindaswamy Naidu and, subsequently, the awards were passed in Award Nos. 2/1994, 1/1995 and 5/1997, which is also a matter for concern, as the proceedings initiated after the death of the owner of the land cannot be termed as legally valid. In this context, I am supported by a decision of the Supreme Court in *Kamal Krishan Rastogi and Others Vs. State of Bihar and Another*, wherein it is held as under:

11. Whether or not the landholders participation in the proceeding before the Additional Collector would cure the illegality of the reopening order passed by the Collector is a debatable issue but we see that on admitted facts that larger issue does not even arise in the case. It would be hardly fair and just to hold that the landholder took any part in the proceeding after it was reopened by the Collectors order. As seen above, on notice being issued by the Additional Collector, Sarju Madhav Rastogi appeared before him on 30-4-1984 and prayed for time for filing objections. He then never appeared and a few months later died on 27-1-1985. He did not file any objection before the Additional Collector. Had he filed one, he might have taken the precise objection that the proceeding was without jurisdiction because the reopening order was itself illegal and without jurisdiction.

12. Admittedly, after the death of Sarju Madhav Rastogi his heirs were neither substituted nor were they given any notice by the Additional Collector. They did not appear before the Additional Collector. What is significant here is to note that the order of the Additional Collector was made against a dead person and for that reason alone it was unsustainable. It was only after the order of the Additional Collector that the heirs of Sarju Madhav Rastogi came into picture when they tried to challenge the order on many grounds including the one that the order was passed in a proceeding that was held on the basis of the Collectors order that was illegal and without jurisdiction. It is, therefore, quite wrong to say that it was not open to the landholders to question the validity of the reopening order since they had participated in the proceeding after its reopening.

13. As noted above, the order of the Additional Collector was also unsustainable for the additional reason that it was passed against a dead person.

19. The above decision of the Apex Court would make it clear that no acquisition proceedings could be initiated against a dead person. If that could be the law, it is not known how the respondents have proceeded with Section 6 Declarations against a dead person. Therefore, the proceedings initiated to that extent by the respondents could be a factor to be interfered with and the proceedings up to the stage of death of the owner of the lands u/s 5A are to be upheld. This is so, despite the stand of the third respondent that the land in S.F. No. 444 which is covered in W.P. No. 27740 of 2012 is also acquired vide Award No. 5/97, dated 19.05.1997; the possession of the land is not handed over by the Special Tahsildar (L.A.); since the land owners often filed writ petitions, the implementation of the Housing Scheme could not be taken up and that only after disposal of the cases, the lands can be utilised for Housing Scheme.

20. One more issue that arises for consideration in this case is, whether, after passing of the awards, the writ petitions are maintainable ?

21. To examine the above question, it could be seen that the land acquisition proceedings were initiated and proceeded further u/s 4(1) with an enquiry u/s 5A and, thereafter, Section 6 declarations were made on a dead person and awards passed in the years 1994, 1995 and 1997. Though the possession in respect of the subject lands is claimed to have been taken over by the respondents, the records would indicate that originally an extent of 21 acres in S.F. No. 410, 411 and 412 of Vilankurichi village including the land in S.F. No. 410/1 covered in W.P. No. 27738 of 2012 has been acquired vide Award No. 2/94, dated 23.05.1994, and taken possession on 09.12.1994. The lands in S.F. No. 407/1, 407/2 and 408 are covered in W.P. No. 27739 of 2012 and they are acquired vide Award No. 1/95, dated 01.04.1995, and that the land in S.F. No. 407/1 alone is taken possession. Since the land comes under industrial zone, necessary conversion proposal has been sent to LPA to change the land use from industrial to residential; after obtaining the approval, the scheme will be implemented and that the lands in S.F. No. 407/2 and 408 have not been taken possession due to writ petitions filed by the land owners. As regards the land in S.F. No. 444, which is covered in W.P. No. 27740 of 2012, the authority has stated that the said land is also acquired vide Award No. 5/97, dated 19.05.1997; the possession of the land has not been handed over by the Special Tahsildar (LA); since the land owners often filed writ petitions, the implementation of the Housing Scheme could not be taken up and that only after disposal of the cases, the lands can be utilised for Housing Scheme.

22. The said position makes it clear that the land acquisition proceedings are not culminated in taking over of possession of the lands, even as the respondents have claimed that awards have been passed and the possession has been taken over and that the Writ Petitions are not maintainable.

23. In a recent ruling in Patasi Devi Vs. State of Haryana and Others, , the Apex Court has laid down a clear proposition about the maintainability of writ petition. It has been held therein that when the possession of land is not taken over

pursuant to passing of award, writ petition is maintainable even after passing of award.

24. In the given situation, as, in this case, the possession of land is not yet taken over, the law laid down by the Supreme Court in the case of Patasi Devi, cited supra, has application and, as such, the contention of the respondents, in this regard, fails and the writ petitions are maintainable.

25. Coming to the question of delay in filing these writ petitions, though the reason assigned by the petitioner is as to pendency of earlier writ petitions and it is not an acceptable factor, considering the continuance of acquisition proceedings on a dead person, who is her father, the submission of the petitioner that she was not aware of the acquisition proceedings much earlier and only after the proceedings reached finality she came to know of the acquisition proceedings cannot be brushed aside.

26. Accordingly, while upholding the impugned proceedings of the first respondent under Sections 4(1) and 5A of the Act, the proceedings u/s 6 and the Awards in Nos. 2/1994, 1/1995 and 5/1997 are quashed in so far as the interest of the petitioner alone and the apportionment thereon. The matter is remitted back to the respondents to initiate the acquisition proceedings afresh in respect of the lands of the petitioner alone, after following due process of law. Writ Petitions are allowed in part. No costs. Consequently, the connected M.P. Nos. 1 of 1012, 2 of 2012 and 1 of 2013, numbering three each, are closed.