

(2014) 07 MAD CK 0232

In the Madras High Court

Case No : Writ Petition No. 25791 of 2010

iGATE Global Solutions Limited

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 02-07-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 269UL(1)
Land Acquisition Act, 1894 — Section 11, 11A, 18, 24(2), 31
Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 — Section 24(1), 24(2)
Transfer of Property Act, 1882 — Section 41

Citation : (2014) 5 MLJ 663

Hon'ble Judges : T. Raja, J

Bench : Single Bench

Judgement

T. Raja, J.—The present writ petition has been filed challenging the impugned letter No.33023/LA(1)/2005-22 dated 9.3.2009 issued by the Secretary to Government, Housing and Urban Development Department, Chennai, the first respondent herein, wherein the request of the petitioner for re-conveyance of the land in question was rejected, to quash the same with a further direction to the respondents to re-convey the property measuring 4.33 acres comprised in Survey Nos.612/5, 612/7, 612/8, 612/9, 612/10 at Sholinganallur Village from acquisition proceedings with one another direction to transfer the property to the petitioner herein. During the pendency of the writ petition, on the arrival of the new Act, namely, The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, which came into force on 1.1.2014, M.P.No.1 of 2014 was filed seeking to amend the prayer, as follows:-

To issue a Writ of Declaration, declaring that the land acquisition proceedings in respect of the land comprised in S.Nos.612/5, 612/7, 612/8, 612/9, 612/10 and 612/12A of Shozhinganallur Village, Shozhinganallur Taluk, Kancheepuram District as having lapsed as per Section 24(2) of the Right to Fair Compensation

and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.'''

Similarly, M.P.No.2 of 2012 was filed seeking to raise additional grounds, as follows:-

(i) No compensation has so far been paid for the lands acquired by an award that was passed in the year 1997 even after the lapse of almost of 17 years. Therefore, on coming into force of the Act 30 of 2013, the land acquisition proceedings in respect of the petitioner's land shall be deemed to have lapsed as provided under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

(ii) The physical possession of the petitioner's property has not been taken by the respondents though the award was passed in the year 1997 as this Hon''ble Court has held that the petitioner is in possession of the property. Therefore, on coming into force of the Act 30 of 2013, the land acquisition proceedings in respect of the petitioner's land shall be deemed to have lapsed as provided under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

(iii) The entire land acquisition proceedings by which the land acquisition proceedings were initiated as against the petitioner's land has been quashed by an order passed in W.P.No.6432 of 1998 and affirmed by the Division Bench as well by the Hon''ble Supreme Court. Therefore, the title of property is vested with the petitioner company consequent upon the quashing of entire notification.

2. Mr. R. Muthukumarasamy, learned senior counsel appearing for the petitioner placed four arguments in support of the prayer. The petitioner, originally known as Mascot Systems Limited, had subsequently changed the name of the company as iGATE Global Solutions Limited with effect from 23.6.2003 and has been engaged in the business of information technology and information technology enables services. With an intention to set up a software unit in the State of Tamil Nadu, the petitioner purchased land admeasuring 4.98 acres comprised in S.Nos.612/5, 612/7, 612/8, 612/9, 612/10 & 612/12 at Sholinganallur village, Tambaram Taluk, Kancheepuram District from Mr. Sujith Cherian and others under sale deeds dated 1.6.2001. Even before purchasing the property, an agreement was reached between the petitioner and the vendor Mr. Sujith Cherian and others for getting NOC from the appropriate authority, Income Tax Department under chapter XX-C of the Income Tax Act by filing Form 37-I on 26.2.2001. Only after accepting the petitioner's request, an order was passed under Section 269UL(1) of the Income Tax Act granting no objection to the transfer of the property in terms of the agreement for sale. Again since the owner had a minor son who also had a share in the property, O.P.No.267 of 2001 was filed in the competent court under the Guardian and Wards Act, 1925 and obtained permission for the sale of the minor's share in the property and an order dated 30.4.2001 was passed granting permission in favour of the petitioner

to purchase the property. Only thereafter, the sale deeds dated 1.6.2001 pertaining to the property were executed by the owner in favour of the petitioner. While so, they received a notice dated 30.9.2005 from the Tamil Nadu Housing Board asking them to vacate and hand over possession, since the property belonged to the Housing Board. Only from the said notice, the petitioner came to know that the land in question became the subject matter of land acquisition proceedings in Award No.1 of 1997 dated 23.4.97. However, a reply was given to the Tamil Nadu Housing Board on 4.10.2005 informing that they were not aware of the Award No.1 of 1997 and made a representation making it clear therein that the petitioner company intended to set up a software park which would generate lot of employment and export orders and also generate lot of foreign exchange that is also in public interest. On this basis, he prayed for transfer of the land under Section 48-B of the Land Acquisition Act, 1894. However, apprehending forcible eviction, the petitioner came to this Court by filing W.P.Nos.33042, 34471 to 34474 of 2005 challenging the notice issued by the Tamil Nadu Housing Board and this Court, by disposing off the writ petitions by order dated 11.8.2008, issued a direction to the first respondent to consider the petitioner's representation dated 5.10.2005 as per Section 48-B of the Land Acquisition Act and pass appropriate orders on merits and in accordance with law after affording a personal hearing to the petitioner to present their case while considering the representation under Section 48-B of the Act. While doing so, the respondents were also directed not to interfere with the possession of the petitioner till final orders are passed.

3. In the meanwhile, when the second respondent made an attempt to erect a notice board and to fence the property in the month of October, 2010, the petitioner was again constrained to approach this Court by filing W.P.No.23743 of 2010 praying for an interim injunction restraining the second respondent-Housing Board from disturbing the petitioner's possession of the property till the disposal of the representation by the first respondent. However, the counsel appearing for the first respondent informed the Court that the representation dated 5.10.2005 was disposed off by the first respondent by order dated 9.3.2009 and a copy thereof was handed over to the learned counsel appearing for the petitioner in the Court, wherein the first respondent rejected the request of the petitioner for re-conveyance on the ground that since the petitioner being a subsequent purchaser, had no right to seek for re-conveyance of the said property under Section 48-B of the Land Acquisition Act. The said order has been put to challenge in this writ petition. In the meanwhile, when the very same notification issued under Section 4(1) dated 14.5.90, Section 6 declaration dated 7.6.91 and the award dated 30.8.98 were challenged by one Mr. Kuppan in W.P.No.6432 of 1998 on the sole ground that the award passed under Section 11-A of the Act was beyond the limitation period of two years, violating the mandatory provisions contained in Section 11-A of the Act, this Court by order dated 28.1.2002 allowed the writ petition by quashing the G.O.Ms.No.433, Housing and Urban Development Department dated 14.5.90 published in

Supplement Part-II under Section 4(1) of the Act and Section 6 declaration contained in G.O.Ms.No.948, Housing and Urban Development Department dated 7.6.91 and the award proceedings bearing Roc.No.8696.89.71 dated 30.8.98. Therefore, when the very same Section 4(1) notification, Section 6 declaration and the award were quashed, the benefit of the quashing of Section 4(1) notification would enure to the benefit of the petitioner as well, he pleaded.

4. Learned senior counsel arguing further pleaded that secondly, by virtue of the latest Act, namely, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, which came into force on 1.1.2014, stating that where an award under Section 11 of the Land Acquisition Act, 1894 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid, the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of the Act. Since both the mandatory conditions mentioned under Section 24(2) of the new Act have not been complied with by the respondents, namely, the compensation awarded has neither been paid to the land owners/persons interested nor deposited in the Court and the physical possession also has not been taken, the land acquisition proceedings shall be deemed to have lapsed. To take support, the learned senior counsel, heavily placing reliance on the recent judgment of the Apex Court in Pune Municipal Corporation and Another Vs. Harakchand Misirimal Solanki and Others, , which holds that the Land Acquisition Act, 1894 being an expropriatory legislation should be strictly followed, contended that under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, the land acquisition proceedings initiated under the 1894 Act, by legal fiction, where the award is made five years or more prior to the commencement of the 2013 Act, possession of land has not been taken or compensation not paid, are deemed to have lapsed. Adding further, Mr. R. Muthukumarasamy, learned senior counsel for the petitioner, relying upon the ratio laid down by the Hon'ble Apex Court, submitted that when Section 24(2) begins with a non-obstante clause, this provision has an overriding effect over Section 24(1). Besides, Section 24(2) indicates in relation to the land acquisition proceedings initiated under the 1894 Act, where an award has been made five years or more prior to the commencement of the 2013 Act and either of the two contingencies is satisfied, namely, (i) physical possession of the land has not been taken or (ii) the compensation has not been paid; such acquisition proceedings shall be deemed to have lapsed.

5. Thirdly, continuing his arguments, he has stated that the Apex Court has also further held that on the lapse of such acquisition proceedings, if the appropriate Government still chooses to acquire the land which was the subject matter of acquisition under the 1894 Act, then it has to initiate proceedings under the 2013 Act. Again, placing emphasis on the said judgment, he has further canvassed

that the petitioner being the subsequent purchaser, the recent Act has also permitted the persons interested to be also entitled to compensation. To demonstrate that the case of the petitioner falls within the two situations laid down by the Apex Court in the said judgment, he has further stated that although the land acquisition proceedings were initiated by issuing the Section 4(1) notification on 14.5.90, the Section 6 declaration on 7.6.91 and the passing of the award on 23.4.97, till now, even after the lapse of 17 long years, the respondents have not come forward to deposit the compensation amount shown in the award dated 23.4.97 by depositing the same in the competent civil Court, the petitioner, who is the landowner, is entitled to question the improper taking over or acquisition of land. Again coming to the aspect of physical possession of the land in question, he has stated that as per the order passed by this Court way back on 11.8.2008 granting injunction against the respondents not to disturb the physical possession, the petitioner is in continuous physical possession of the land in question. Therefore, the above two situations would be safely made applicable to the case of the petitioner, with the result, the legal fiction under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 would come into operation, as laid down by the Apex Court, as and when the conditions stated thereunder are satisfied. In view of that, he prayed for allowing the writ petition.

6. Per contra, Mr. S. Gomathinayagam, learned Additional Advocate General appearing for the respondents, vehemently opposing the prayer, urged this Court to dismiss the writ petition, as the petitioner has not come to this Court with clean hands. Adding further, he has further contended that the petitioner by their conduct has attempted to play fraud not only against the respondents, but also on this Court by concealing the vital information. Inasmuch as the petitioner being the subsequent purchaser of the land in question from the original owner Mr. Sujith Cherian, after the land acquisition proceedings were initiated under Section 4(1) followed by the Section 6 declaration and the passing of the award, by virtue of Section 16-A of the Land Acquisition (Tamil Nadu Amendment) Act, 1996, the sale of lands in question under the sale deeds dated 1.6.2001 are null and void. Again placing heavy reliance on the judgment of the Apex Court in the case of V. Chandrasekaran and Another Vs. The Administrative Officer and Others, for the proposition that the subsequent purchaser cannot challenge the acquisition proceedings, he has further contended that the petitioner being subsequent purchaser, may be a person interested in compensation, since he steps into the shoes of the erstwhile owner and therefore, he can merely claim compensation. But he is not entitled to challenge the proceedings, for the reason that his title is void. Again meeting the first argument of the learned senior counsel appearing for the petitioner that the quashing of the notification and the declaration under the Act by the Court in respect of others, whether the said benefit would go to the non-parties also, again taking support from the same judgment, Mr. S. Gomathinayagam, learned Additional Advocate General canvassed before this Court that the said issue has also been concluded against

the petitioner holding that the quashing of notification in the case of individual writ petitioner cannot be treated as quashing of the whole of it and in case where a person interested has not challenged the acquisition proceedings, he cannot claim that the order of quashing the declaration in some other matter would also cover his case.

7. Moving to the ratio laid down by the Apex Court on the recent judgment in Pune Municipal Corporation case cited supra with regard to the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, which came into force on 1.1.2014, although he has contended that both the situations, namely, physical possession of the land has not been taken and the compensation has not been paid also cannot be pressed into service by the petitioner, since the physical possession of the land in question has been taken long time back and the revenue records in respect of the land in question have been changed in the name of the Tamil Nadu Housing Board, as such, the question of application of the ratio laid down by the Apex Court in Pune Municipal Corporation case cannot be applied to the petitioner, again referring to the second contingency that where an award has been made five years or more prior to the commencement of the 2013 Act and the compensation has not been paid, in such situation, again the proceedings shall be deemed to have lapsed also, he pleaded that this ground also, cannot be made applicable, since the compensation in this case has already been deposited in the Sub Treasury, Saidapet in the name of the original owner on 31.3.97 for a sum of Rs.43,91,655/- covering not only the petitioner's land, but also for other lands covered in the Award No.1 of 1997 dated 23.4.97 and Award No.1 of 1997 dated 2.5.97.

8. Mr. S. Gomathinayagam, learned Additional Advocate General for the respondents, while urging this Court emphatically to dismiss the writ petition on the ground of no locus standi, since the petitioner was a subsequent purchaser of the land covered in S.Nos.612/5, 612/7, 612/8, 612/9, 612/10 & 612/12 at Sholinganallur village, Tambaram Taluk, Kancheepuram District in the award No.1 of 1997 dated 23.4.97 from the vendor only on 1.6.2001 subsequent to the date of the award, again submitted that the possession of the said land was also handed over to the Tamil Nadu Housing Board by the land acquisition officer on 16.8.2004. Again explaining that the petitioner's vendor Mr. Sujith Cherian, even after executing the sale deed on 1.6.2001, prosecuted the Writ Petition No.3292 of 2000 filed by him under Article 226 of the Constitution of India challenging the notification issued under Section 4(1) of the Land Acquisition Act in G.O.Ms.No.437, Housing and Urban Development Department dated 14.5.90 and the consequential declaration made under Section 6 of the Act, but the said writ petition was also dismissed on 13.2.2004 by giving a finding that the award was passed on 23.4.97 within a period of two years. After the dismissal of the writ petition, the petitioner once again filed Writ Petition Nos.33042, 34471 to 34474 of 2005 challenging the notice dated 30.9.2005 issued by the Executive Engineer, Tamil Nadu Housing Board asking the petitioner to vacate from the land in

question, however, this Court, while disposing off the said writ petitions, directed the Secretary to Government, Housing and Urban Development Department to consider the representation of the petitioner made under Section 48-B of the Act and pass orders on merits. Finally, in compliance of the said order passed by this Court, the first respondent also, by the impugned order dated 9.3.2009, refusing to accept the request for re-conveyance of the land in S.Nos.612/5, 612/7, 612/8, 612/9, 612/10 & 612/12 measuring an extent of 4.33 acres in Sholinganallur village, Tambaram Taluk, Kancheepuram District, rejected the request for re-conveyance of the land in question on the ground that the petitioner being a subsequent purchaser of the land, has no locus to move any application under Section 48-B of the Land Acquisition Act, 1894.

9. Again pointing out to the Court that the case of the petitioner cannot be believed on the point of no compensation being paid, the learned Additional Advocate General, again bringing to the notice of this Court the petition filed under Section 48-B of the Act dated 5.10.2005, making a statement therein that the petitioner was willing to pay the award amount along with nine percent interest to the Housing Board, submitted that the said statement clearly shows that the petitioner had already received the compensation. Therefore, the ratio laid down by the Apex Court in Pune Municipal Corporation case that if the compensation was not paid to the person interested where an award is made more than five years prior to the commencement of the 2013 Act, the land acquisition proceedings are deemed to have lapsed, cannot be applied to the petitioner, since the petitioner in his petition under Section 48-B having mentioned that he was willing to pay back the award amount along with nine percent interest to the Housing Board clearly shows that he had already received the compensation. Whereas in the present affidavit filed in support of the writ petition, has taken a totally diametrically opposite stand that he was not paid with the compensation. Such a person taking inconsistent stand every now and then should be held to have lost the right to move this Court under Article 226.

10. Coming to the ratio of legal fiction under Section 24(2) laid down by the Apex Court in Pune Municipal Corporation case holding that the acquisition proceedings shall be deemed to have lapsed where an award has been made five years or more prior to the commencement of the 2013 Act and possession of the land has not been taken or the compensation has not been paid, argued that the two contingencies, namely, physical possession of the land has not been taken or the compensation has not been paid also are not applicable to the petitioner, since the physical possession of the land in question covered in S.Nos.612/5, 612/7, 612/8, 612/9, 612/10 & 612/12 at Sholinganallur village, Tambaram Taluk, Kancheepuram District was already taken by the first respondent and handed over to the second respondent-Housing Board and the revenue records also clearly portrays the fact of physical possession having been taken over from the petitioner's vendor. Again explaining before this Court the payment of compensation, he has repeatedly argued that the admission made by the petitioner in his petition filed under Section 48-B dated 5.10.2005 clearly shows

that the land owner had already received the compensation. Therefore, the legal fiction under Section 24(2) of the Act decided by the Apex Court in Pune Municipal Corporation case is not applicable to the case of the petitioner.

11. By way of reply to the arguments of the other side as to the maintainability of the writ petition, since the petitioner was a subsequent purchaser, Mr. R. Muthukumarasamy, learned senior counsel submitted that the issue as to whether the subsequent purchaser has got locus standi to question the acquisition proceedings, has been answered by a Full Bench of this Hon"ble Court way back in the year 1992 in Seethalakshmi Ammal v. The State of Tamil Nadu represented by the Secretary to Housing and Land Development Department and another, 1992-1-L.W.7, prescribing a test that it should be seen whether the petitioner has been deprived of a legal right and/or has sustained injury to any legally protected interest or, in other words, whether he has been subjected to a legal wrong or suffered any legal grievance and if the question asked shows that he has challenged the acquisition for (1) it is void for a valid reason, the Court shall protect his interest; (2) otherwise, the court shall take notice of the legal injury, if any, and see whether it can remedy it. In the present case, the petitioner has established his case that the legal wrong suffered requires a judicial intervention. Therefore, as per the ratio laid down by the Hon"ble Full Bench of this Court, ruling categorically that a subsequent purchaser is entitled to question the acquisition proceedings, cannot be misread or misplaced by the other side.

12. Secondly, while taking on the allegation of fraud and misrepresentation made by the learned Additional Advocate General, it was replied by Mr. R. Muthukumaraswamy that it is not open to the respondents to point accusing fingers to the petitioner with the allegation of fraud, when the respondents themselves have aggravated the misrepresentation and fraud in not paying compensation till now to the land owner. Moreover, admittedly, when there is no document shown before this Court that the respondents had paid the amount of compensation mentioned in the award to the petitioner or to the vendor, the fact remains that the respondents are making attempt to overreach the Court by playing fraud with the Court, hence, they are more deserved to be called as persons coming to this Court with unclean hands and accordingly prayed for allowing the prayer instantaneously.

13. Heard the parties on both sides.

14. At the outset, let me examine the first point in issue whether the petitioner, who is admittedly a subsequent purchaser of the land in question from his vendor Mr. Sujith Cherian covered in S.Nos.612/5, 612/7, 612/8, 612/9, 612/10 & 612/12 at Sholinganallur village, Tambaram Taluk, Kancheepuram District in and by virtue of the three sale deeds dated 1.6.2001 after the passing of the award No.1 of 1997 dated 23.4.97, is entitled to maintain this writ petition. When a similar and identical issue came up before the Apex Court in the case of V. Chandrasekaran and Another Vs. The Administrative Officer and Others, , the

Hon"ble Apex Court while deciding the question as to whether a subsequent purchaser can challenge the acquisition proceedings, has answered as follows:-

"6. The issue of maintainability of the writ petitions by the person who purchases the land subsequent to a notification being issued under Section 4 of the Act has been considered by this Court time and again. In Pt. Lila Ram Vs. The Union of India and Others, , this Court held that, any one who deals with the land subsequent to a Section 4 notification being issued, does so, at his own peril. In Smt. Sneha Prabha etc. Vs. State of U.P. and Another, , this Court held that a Section 4 notification gives a notice to the public at large that the land in respect to which it has been issued, is needed for a public purpose, and it further points out that there will be ""an impediment to any one to encumber the land acquired thereunder."" The alienation thereafter does not bind the State or the beneficiary under the acquisition. The purchaser is entitled only to receive compensation. While deciding the said case, reliance was placed on an earlier judgment of this Court in Union of India v. Shri Shiv Kumar Bargava and others, JT (1995) 6 SC 274.

7. Similarly, in U.P. Jal Nigam, Lucknow through its Chairman and another Vs. M/s. Kalra Properties (P) Ltd. Lucknow and others, , this Court held that, purchase of land after publication of a Section 4 notification in relation to such land, is void against the State and at the most, the purchaser may be a person-interested in compensation, since he steps into the shoes of the erstwhile owner and may therefore, merely claim compensation. (See also: Star Wire (India) Ltd. Vs. State of Haryana and Others, .

15. The above categorical ruling of the Apex Court amply indicates two views. The first view without any doubt whatsoever is that the subsequent purchaser cannot challenge the acquisition proceedings, however, the purchaser is entitled to receive the compensation, since he steps into the shoes of the erstwhile owner and may therefore merely claim compensation on the basis of earlier ruling of the Apex Court in Star Wire (India) Ltd. Vs. State of Haryana and Others, . The second view of the Apex Court as held in paragraph-23 of the judgment also carries equal importance, which is extracted as under:-

23. The general rule of law is undoubted, that no one can transfer a better title than he himself possesses; Nemo dat quod non habet. However, this Rule has certain exceptions and one of them is, that the transfer must be in good faith for value, and there must be no misrepresentation or fraud, which would render the transactions as void and also that the property is purchased after taking reasonable care to ascertain that the transferee has the requisite power to transfer the said land, and finally that, the parties have acted in good faith, as is required under Section 41 of the Transfer of Property Act, 1882. (Vide Asa Ram and Another Vs. Mst. Ram Kali and Another, ; State Bank of India Vs. Rajendra Kumar Singh and Others, , Controller of Estate Duty, Lucknow Vs. Aloke Mitra, ; Hanumant Kumar Talesara Vs. Mohan Lal, and State of Punjab Vs. Surjit Kaur (dead) through L.Rs. and Others .

16. After discussing the general rule of law that no one can transfer a better title than he himself possesses, the Apex Court further proceeded to hold that this rule has certain exceptions and one of them is that the transfer must be in good faith for value and there must be no misrepresentation or fraud, which would render the transactions as void and also that the property is purchased after taking reasonable care to ascertain that the transferee had the requisite power to transfer the said land and finally the parties had acted in good faith as required under Section 41 of the Transfer of Property Act, 1882. In the light of the above ruling, if the petition filed under Section 48-B of the Land Acquisition Act, 1894 dated 5.10.2005 filed before the first respondent is perused, it shows that the petitioner, before purchasing the property, has entered into an agreement for sale on 26.1.2001 on the representation of the owners that the property was not the subject matter of any acquisition proceedings and there was no encumbrance of the property. Therefore, the said agreement was submitted for getting NOC from the appropriate authority, Income Tax Department under Chapter XX of the Income Tax Act by filing Form 37-I on 26.2.2001. The appropriate authority also passed an order under Section 269UL(1) of the Income Tax Act granting no objection to the transfer of the property in terms of the agreement for sale. Secondly, since the erstwhile owner had a minor son who also had a share in the property, the petitioner company also moved O.P.No.267 of 2001 under the Guardian and Wards Act, 1925 before a competent Court and obtained permission for the sale of the minor's share in the property by order dated 30.4.2001. That apart, the previous vendor Mr. Sujith Cherian also represented that the original documents related to the said land were also lost, on this ground also, a public notice was issued in the Indian Express calling upon the person having any right or interest in the property or any person having custody of the original documents to lodge their claim. As there was no claim filed, the petitioner's vendor proceeded to execute the sale deed dated 1.6.2001 pertaining to the property. The above steps taken by the petitioner by executing the agreement for sale dated 26.1.2001, by obtaining an order under Section 269UL(1) of the Income Tax Act and another order in O.P.No.267 of 2001 under the Guardian and Wards Act, 1925 seeking permission for sale of the minor's share by order dated 30.4.2001 bring the case of the petitioner under the exceptions carved out in paragraph-23 of the aforesaid judgment which, as highlighted above, clearly states that if the transfer is in good faith for value and the property is purchased after taking reasonable care to ascertain that the transferee has the requisite power to transfer the land, it should be held that the parties have acted in good faith as required under Section 41 of the Transfer of Property Act. Therefore, this Court is able to see from the above order and record that the case of the petitioner is brought under the exception carved out by the Apex Court that the petitioner has acted in good faith and that the purchase was a bona fide one.

17. Therefore, while seeking an answer to the question as to whether the petitioner being a subsequent purchaser is entitled to maintain the writ petition,

it can be seen that the said issue is no longer *res integra*, as this has been replied in the affirmative by the Apex Court in the same V.Chandrasekaran's case in paragraph 22, which is extracted as under:-

22. In view of the above, the law can be crystallized to mean, that once the land is acquired and it vests in the State, free from all encumbrances, it is not the concern of the land owner, whether the land is being used for the purpose for which it was acquired or for any other purpose. He becomes *persona non-grata* once the land vests in the State. He has a right to only receive compensation for the same, unless the acquisition proceeding is itself challenged. The State neither has the requisite power to reconvey the land to the person interested, nor can such person claim any right of restitution on any ground, whatsoever, unless there is some statutory amendment to this effect.

(emphasis supplied)

18. A careful reading of the above five lines of the paragraph clearly shows that when there is some statutory amendment to this effect, a person can claim the right of restitution. In the present case, when the petitioner being a subsequent purchaser has filed the present writ petition challenging the correctness of the impugned order dated 9.3.2009 rejecting the request of the petitioner for re-conveyance of the property under Section 48-B of the Act, the new Act, namely, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, which came into effect from 1.1.2014, clearly stating that where an award has been made five years or more prior to the commencement of the 2013 Act along with the two contingencies specified, namely, physical possession of the land has not been taken or the compensation has not been paid, such acquisition proceedings shall be deemed to have lapsed. On the lapse of such acquisition proceedings, if the appropriate Government still chooses to acquire the land, which was the subject matter of acquisition under the 1894 Act, then it has to initiate the land acquisition proceedings afresh under the 2013 Act.

19. Before proceeding further, it is more useful to refer to a direct Full Bench judgment of this Court on the issue whether a subsequent purchaser has got *locus standi* to challenge the land acquisition proceedings in the case of *Seethalakshmi Ammal v. State of Tamil Nadu* represented by the Secretary to Housing and Land Development Department and another reported in 1992 1 LW 7. In the said judgment, the issue was whether the subsequent purchaser of the property is entitled to question the acquisition proceedings and whether he has got *locus standi* as a person aggrieved for invoking Article 226 of the Constitution of India. Although one earlier Division Bench of this Court in W.P.No.865 of 1982 and W.P.No.3137 of 1989 dated 8.1.88 and 21.1.88 respectively held that the subsequent purchaser had no *locus standi* to file the writ petition at all, one another co-ordinate Division Bench of this Court, disagreeing with the view that the subsequent purchaser has no *locus standi* to file the writ petition, referred the issue to a Full Bench, by order of reference dated 15.2.91, as under:-

A Bench of this Court in a batch of writ petitions in W.P.No.865 of 1982 etc. held in its judgment dated 8.1.1988 that a subsequent purchaser of a property notified for acquisition under Section 4(1) of the Land Acquisition Act I of 1894 and then followed up by S.6 declaration, cannot have any locus standi to question the acquisition. Following the abovesaid ratio, the same Bench has taken the same view in W.P.No.3137 of 1983 dated 21.1.1988. After going through the judgment of the Supreme Court in Smt. Gunwant Kaur and Others Vs. Municipal Committee, Bhatinda and Others, , we are unable to agree with the view taken by the earlier Division Bench of this Court holding that the subsequent purchaser has no locus standi to file the writ petition at all. Such a proposition as stated above is too broad in our opinion, having regard to the ratio laid down by the Supreme Court in Smt. Gunwant Kaur v. Batinda Municipality.

Thereupon the Hon''ble Full Bench, after going through the judgment of the Apex Court in Smt. Gunwant Kaur and Others Vs. Municipal Committee, Bhatinda and Others, , also has undoubtedly cleared the issue that if the purchaser is able to show that something is being done contrary to law in the name of land acquisition, he can maintain the writ petition. It is also useful to extract paragraphs 30 & 31 of the Hon''ble Full Bench judgment as follows:-

30. We have already seen that the concept of person aggrieved is not in any way different from a person interested and that there can be a variety of interests and different persons may have different interests. It is also possible that a person surrendered some interests but fought for the other interests, such as the owner found no tenable objection to the acquisition but questioned the adequacy of the compensation. The locus standi to question the acquisition thus will not be available to him. He can, however, question the quantum of compensation. Similarly a purchaser of a piece of land under acquisition, who came in the picture only after the stage of objection under S.5-A but before the dispute of compensation was decided, may enter into the proceeding and question the compensation amount but may not demand inquiry under S.5-A of the Act. If he purchased after the notice under S.9, he cannot be heard to say that he was entitled to a notice. A purchaser, may have a right to raise objections to the award and/or even acquisition such as the objection that the proceeding elapsed because the award was not made within the stipulated period and like but not the objections which the owner availed or had opportunity to avail under S.5-A of the Act. If his purchase is after the award but before possession is taken by the Collector, he may not be heard to question the acquisition because his vendor never questioned the acquisition. These, however, will depend upon facts as well as law attracted to the fact situation of each case. Thus it will be a misconception to say that a purchaser shall have no locus standi. But it will be equally misconceived if it is said that the purchaser shall have locus standi in all circumstances.

(emphasis supplied)

The circumstances of each case will thus show how far the Court can go to

accommodate the purchaser/petitioner and what is the extent of his right in jeopardy. If he is coming to meddle in the proceeding in which his vendor had notice and/or participated, he would only be seeking a re-commencement of the proceeding. That will not be permissible. He shall be thus exhibiting as noticed in the case of *Coleman v. Miller*, 1939 307 US 433 that he has got no standing to sue for judicial relief. Courts can intervene only where legal right are invaded. Legal wrong requires a judicially enforceable right and the touchstone to justiciability is injury to a legally protected right. In all cases, the Courts shall refuse to recognise the right which has got an illegal effect and decline for that reason to recognise the standing of the petitioner. In short, if the purchaser/petitioner is in a position to show that something has been done contrary to law in the name of the land acquisition proceeding under the Act, he can maintain a writ petition and he shall have locus standi, otherwise not. As observed in the judgment of the Supreme Court in the case of *Jasbhai Desai* (supra):

(emphasis supplied)

It is true that in the ultimate analysis, the jurisdiction under Article 226 in general and certiorari in particular is discretionary. But in a country like India where writ petitions are instituted in the High Courts by the thousand, many of them frivolous, a strict ascertainment, at the outset, of the standing of the petitioner to invoke this extraordinary jurisdiction, must be insisted upon.

It should be seen whether the petitioner has been deprived of a legal right and/or has sustained injury to any legally protected interest or, in other words, whether he has been subjected to a legal wrong or suffered any legal grievance. According to the Supreme Court, if he has no legal peg for a justiciable claim to hang on, he is not a person aggrieved and has no locus standi to challenge.

31. Thus the Court must ask the questions from all such persons as indicated above and if questions asked show that he has challenged the acquisition for (1) it is void for a valid reason, the Court shall protect his interest; (2) otherwise, the court shall take notice of the legal injury, any, see whether it can remedy it and if there is no legal grievance, hold that he is not person aggrieved and thus got no locus standi.

20. The above ratio amply shows that the petitioner not only falls within the above ruling of the Full Bench, but also falls within the ruling of the Apex Court in *V.Chandrasekaran*'s case in paragraph-22, therefore, the first objection raised by the learned Additional Advocate General for the respondents that the subsequent purchaser cannot challenge the acquisition proceedings is answered against the respondents, as a Full Bench of this Court and the Apex Court, as highlighted above, have held that the subsequent purchaser is also entitled to maintain the writ petition under Article 226 of the Constitution of India.

21. The learned Additional Advocate General, while criticising the locus standi of the petitioner in challenging the acquisition proceedings, has heavily argued that by virtue of Section 16-A of the Land Acquisition (Tamil Nadu Amendment) Act,

1996, the transfer of the land in question in favour of the petitioner after the issuance of Section 4(1) notification shall be null and void. A careful reading of the Section 16-A will again show how fallacious his argument is. In this context, it is pertinent to extract Section 16-A of the Act as follows:-

16-A. Restriction on transfer, etc.--(1) No person or authority (other than the Government), for whom any land is acquired under this Act for any public purpose as referred to in sub-section (1) of section 4, shall transfer the said land or any part thereof by way of sale, mortgage, gift, lease or otherwise except with the previous sanction of the Government.

(emphasis supplied)

(2) Where it is noticed or any information has been received that any land has been transferred in contravention of sub-section (1), the Government may by an order, declare the transfer to be null and void and on such declaration, the land shall, as penalty, be forfeited to, and vest in, the Government in Revenue Department free from all encumbrances:

Provided that no order under this sub-section, shall be made unless such person or authority has had a reasonable opportunity of being heard.

22. A close and careful reading of the above Section 16-A unambiguously shows that no person or authority for whom any land is acquired shall transfer the said land by way of sale, gift, mortgage, lease or otherwise except with the previous permission of the Government and if the Government comes to know that the authority for whose favour the land is acquired has transferred the land, by notification, it could declare the transfer to be null and void. But that does not apply to the land owners. In fact, there is no such provision in the Land Acquisition (Tamil Nadu Amendment) Act prohibiting the transfer of the land by the land owner during the acquisition proceedings, although it is impliedly understood that the land owner, who suffered the land acquisition proceedings, shall not transfer the land as there is no legal bar in the Act.

23. Now moving to the core question whether the petitioner is entitled to reap the benefit of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, which came into effect from 1.1.2014, admittedly, the award in the present writ petition was passed on 23.4.97 and thereafter notices were issued to the land owners to receive the compensation. However, since they did not receive the same and an amount of Rs.43,91,655/- was deposited in the Sub Treasury, Saidapet, the further question is whether can it be said that deposit of the amount of compensation in the Government treasury is equivalent to the amount of compensation paid to the land owners/persons interested. The Apex Court has answered the said question also in the negative in Pune Municipal Corporation case. Paragraphs 19 and 20 of the said judgment may be usefully extracted hereunder:-

19. Now, this is admitted position that award was made on 31.01.2008. Notices

were issued to the landowners to receive the compensation and since they did not receive the compensation, the amount (Rs.27 crores) was deposited in the government treasury. Can it be said that deposit of the amount of compensation in the government treasury is equivalent to the amount of compensation paid to the landowners/persons interested? We do not think so. In a comparatively recent decision, this Court in Ivo Agnelo Santimano Fernandes and Others Vs. Government of Goa and Another, , relying upon the earlier decision in Prem Nath Kapur and Another Vs. National Fertilizers Corpn. of India Ltd. and Others, , has held that the deposit of the amount of the compensation in the State's revenue account is of no avail and the liability of the State to pay interest subsists till the amount has not been deposited in Court.

(emphasis supplied)

20. From the above, it is clear that the award pertaining to the subject land has been made by the Special Land Acquisition Officer more than five years prior to the commencement of the 2013 Act. It is also admitted position that compensation so awarded has neither been paid to the landowners/persons interested nor deposited in the court. The deposit of compensation amount in the government treasury is of no avail and cannot be held to be equivalent to compensation paid to the landowners/persons interested. We have, therefore, no hesitation in holding that the subject land acquisition proceedings shall be deemed to have lapsed under Section 24(2) of the 2013 Act.

24. In order to find out whether compensation has been made to the land owner or person interested so as to apply the above ruling, whether the non payment of compensation would enure to the benefit of the petitioner under the 2013 Act, this Court repeatedly asked the respondents to produce before this Court the proof of payment of compensation as awarded by the respondents either to the original land owner or to the vendor or persons interested who are entitled to compensation, since this Court has held that, as contemplated under Section 31(2) of the Land Acquisition Act, if the compensation has not been paid, the Collector should deposit the amount of compensation in the court to which the reference can be made under Section 18. Although the matter was repeatedly adjourned, Mr. S. Gomathinayagam, learned Additional Advocate General produced the original copy of the TNTC 9 treasury challan dated 31.3.97 bearing the seal of State Bank of India, Saidapet Bazaar, Madras-15 along with another office seal of the Special Deputy Collector (Land Acquisition) for a sum of Rs.43,91,655/-. One of the remarks entered therein shows, being the compensation amount payable to the land owners in S.Nos.408/1 etc., of Sholinganallur village, the above deposit does not show the name of the land owners nor the specified survey numbers and the exact amount payable to the land owners. In this context, it is necessary to have a look at Section 31 of the Land Acquisition Act, 1894, which reads as follows:-

31. Payment of compensation or deposit of same in Court.--(1) On making an award under section 11, the Collector shall tender payment of the compensation

awarded by him to the persons interested entitled thereto according to the award, and shall pay it to them unless prevented by someone or more of the contingencies mentioned in the next sub-section.

(2) If they shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the Court to which a reference under section 18 would be submitted:

Provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount:

Provided also that no person who has received the amount otherwise than under protest shall be entitled to make any application under section 18:

Provided also that nothing herein contained shall affect the liability of any person, who may receive the whole or any part of any compensation awarded under this Act, to pay the same to the person lawfully entitled thereto.

(3)... & (4)....

25. A close reading of the above section unambiguously indicates that Section 31(1) enjoins upon the Collector on making an award under Section 11 to tender payment of compensation to the persons interested as per the award. The section again mandates the Collector to make the payment of compensation to them unless prevented by one of the contingencies contemplated in sub-section (2) as extracted above. Moreover, the above section also shows that if due to any of the problems, the Collector is prevented from making the payment of compensation to the persons interested who are entitled to compensation, then the Collector is required to deposit the compensation in the Court to which a reference under Section 18 may be made. Therefore, when the Collector who is making award under Section 11 is having the mandatory and bounden duty to tender the payment of compensation to the land owner as per the award or in the alternative the land owner refuses to take, he will deposit the amount of compensation in the Court to which the reference can be made under Section 18, again, admittedly, the Collector has neither made the payment of compensation to the land owner nor made any attempt to deposit as per Section 31(2) in the reference Court under Section 18. Therefore, one of the twin contingencies, namely, the compensation has not been paid, having been satisfied, it leads to the inescapable conclusion that the land acquisition proceedings shall be deemed to have lapsed, resultantly, the legal fiction under Section 24(2) that the land acquisition proceedings initiated under the 1894 Act are deemed to have lapsed, comes into operation in the present case as well.

26. With regard to the physical possession, much labour was spent on the said issue by the learned Additional Advocate General to show that the physical possession of the land had already been taken over. In support of that, he has

also produced the additional typed set of papers wherein the revenue records are carrying the name of the Tamil Nadu Housing Board in respect of the land in question covered in S.Nos.612/5, 612/7, 612/8, 612/9, 612/10 & 612/12 at Sholinganallur village, Tambaram Taluk, Kancheepuram District.

27. By reply to this argument, Mr. R. Muthukumarasamy, learned senior counsel for the petitioner, also placed before this Court the order passed by this Court in Writ Petition Nos.33042, 34471 to 34474 of 2005 dated 11.8.2008 showing that the physical possession of the land is with the petitioner, which could be seen from paragraph-5 of the order as given hereunder:-

5. Considering the fact that the petitioner is in possession of the property, to meet the ends of justice, I am of the view that the first respondent must be directed to consider the claim of the petitioner as well as respondents 4 to 8 made as per section 48B of the Land Acquisition Act and pass appropriate orders and in the meantime, not to disturb the possession of the petitioner.

28. When the above order dated 11.8.2008 directing the first respondent to consider the petitioner's representation dated 10.5.2005 filed under Section 48-B of the Act indicates that the physical possession of the land was with the petitioner, even for the sake of arguments, if the physical possession of the land was taken by the Government and handed over to the Tamil Nadu Housing Board on 16.8.2004 as found in the impugned order dated 9.3.2009, as per the judgment of the Apex Court in Pune Municipal Corporation case, if either of the two contingencies is satisfied, on the sole ground that the deposit of compensation has not been made under Section 18 of the Act, the land acquisition proceedings initiated by the respondents insofar as the lands in S.Nos.612/5, 612/7, 612/8, 612/9, 612/10 & 612/12 at Sholinganallur village, Tambaram Taluk, Kancheepuram District having an extent of 4.33 acres are concerned, shall be deemed to have lapsed. The Hon'ble Supreme Court, in Babu Manmohan Das Shah and Others Vs. Bishun Das, , while interpreting the word "or", found that there is no reason why the word "or" should be construed otherwise than in its ordinary meaning. If the construction were to be construed as meaning "and" it would mean that the construction should not only be such as materially alter the accommodation but is also such that it would substantially diminish its value. Further, when a Division Bench of this Court also in its latest judgment in Writ Appeal Nos.368 of 2013 and 538 of 2014 dated 16.6.2014 (A.Nagarajan and four others v. The Secretary to Government, Housing and Urban Development Department and two others) has clearly found that the availability of one of the two alternatives would suffice for invocation of Section 24(2), keeping in view that the respondents had failed to take physical possession of the land in question, the land acquisition proceedings initiated by the respondents shall be deemed to have lapsed. Further, even if the argument of the learned Additional Advocate General for the respondents that they have taken over the physical possession of the land in question is accepted, since the documents are clearly showing in favour of the petitioner that no compensation

has been paid as per Section 31(2) by depositing the same in the reference Court, the dismissal of the writ petition would go against the judgment of the Apex Court in Pune Municipal Corporation case.

29. In a similar and identical circumstance, while dealing with the same issue, in the light of the latest judgment of the Apex Court in Pune Municipal Corporation case, the Hon''ble Division Bench of our High Court in P.Jayadevan v. State Government rep. by its P. Jayadevan Vs. The State Government and The Tamil Nadu Housing Board, , has also held as follows:-

21. In view of the above said subsequent development from 1.1.2014, this Court is of the view that the land acquisition proceedings initiated in respect of lands admeasuring 0.62.0 hectares in Survey No.890/1B and 0.49.0 hectares in Survey No.889/1B, can be treated to be deemed to have lapsed. However, it is always open to the respondents to initiate proceedings afresh in terms of Central Act 30 of 2013 if the circumstances warrant so.

22. The contention of the State that in the earlier round of litigation, the appellant was denied relief and hence he is not entitled to indirectly challenge the proceeding cannot be countenanced as the challenge now made is for not depositing the compensation in the Court, which is in subsequent stage and by operation of law, the proceeding is deemed to be lapsed.

30. For all the foregoing reasons, the land acquisition proceedings initiated by the respondents insofar as the lands in S.Nos.612/5, 612/7, 612/8, 612/9, 612/10 & 612/12 at Sholinganallur village, Tambaram Taluk, Kancheepuram District having an extent of 4.33 acres are concerned, shall be deemed to have lapsed by legal fiction in view of the enactment of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, which shall enure to the benefit of the petitioner, even without allowing the amendment application. Accordingly, the impugned order is set aside and the writ petition stands allowed. Consequently, M.P.Nos.1 & 2 of 2014 are closed. However, there shall be no order as to costs.