
(2011) 08 MAD CK 0088

In the Madras High Court

Case No : Writ Petition No's. 4566 and 4567 of 2011

J. Rajan Babu and V. Saravanan

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 30-08-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Constitution of India, 1950 — Article 227
National Highways Act, 1956 — Section 3A
National Highways Laws (Amendment) Act, 1997 — Section 3A
Transfer of Property Act, 1882 — Section 52

Citation : (2011) 08 MAD CK 0088

Hon'ble Judges : R. Sudhakar, J

Bench : Single Bench

Advocate : T.V. Ramanujam for T.V. Krishnamachari, for the Appellant; J. Ravindran, for R 1, M. Dhandapani, Special Government Pleader, for R 2 and P. Wilson, A.A.G., for R 3, for the Respondent

Final Decision : Dismissed

Judgement

R. Sudhakar, J.—Writ Petition Nos. 4566 and 4567 of 2011 are filed praying to issue a Writ of Declaration, declaring that the entire

enquiry proceedings conducted by the second Respondent in respect of proposed acquisition of the Petitioner's lands morefully described in the

schedule of the accompanying writ petition under the National Highways Act, 1956 is null and void for not following the directions of this Court

passed in W.P. No. 13286 of 2009 and W.P. No. 16678 of 2010 by common order dated 25.1.2011.

2. Writ Petition Nos. 4568 and 4569 of 2011 are filed praying to issue a Writ of Declaration, declaring that the entire enquiry proceedings

conducted by the second Respondent in respect of proposed acquisition of the

Petitioner's lands morefully described in the schedule of the accompanying writ petition under the National Highways Act, 1956 is null and void for not following the directions of this Court passed in W.P.

No. 13186 of 2009 and W.P. No. 16679 of 2010 by common order dated 25.1.2011.

3. The relief sought for in all the four writ petitions are one and the same. By consent of all parties, all the writ petitions are taken up together and disposed of by this common order.

4. The brief facts of the case in W.P. Nos. 4566 and 4567 of 2011 are as follows: Petitioner, Mr. J. Rajan Babu, is the absolute owner of the land and building in Survey Nos. 425/3, 425/4 and T.S. No. 51/2, Ammapet Rural Village, Salem Taluk, Salem District. He purchased the same by way of sale deed dated 5.9.2005. Petitioner sold some portion of the above property to his sister B. Ramya, the fifth Respondent (deleted at the instance of the Petitioner) by way of registered sale deed dated 29.12.2006. The fifth Respondent sold some portion of the above property to another sister S. Priya, the fourth Respondent (deleted at the instance of the Petitioner) by way of registered sale deed dated 27.12.2007.

Accordingly, the Petitioner and his sisters are in possession of the above properties. The above properties were proposed to be acquired under

the National Highways Act, 1956. The paper publication u/s 3(A)(3) was made on 13.6.2008 for the Notification dated 6.5.2008 issued u/s 3-A

of the National Highways Act, 1956. The Petitioner gave his objections on 8.7.2008 which was rejected on 5.9.2008. The Notification u/s 3D was

published in the Gazette on 4.5.2009 and consequently publication was made in terms of Section 3G(3) of the Act on 5.6.2009. According to the

Petitioner, the Competent Authority without considering Petitioner's objection attempted to fix the compensation for the lands proposed to be

acquired arbitrarily. Hence, Petitioner filed W.P. No. 13286 of 2009 for the following relief:

That this Hon'ble Court may be pleased to issue a writ of mandamus or any other appropriate writ, order or direction, in the nature of a writ,

directing the 2nd Respondent to give opportunity to the Petitioner to place all the documents showing their right, title, and interest for the lands

described in the schedule of the accompanying petition proposed to be acquired

and also produce relevant materials regarding the market value of the lands for fixing the compensation, through our legal practitioner on the day to be fixed by this Hon"ble Court which are to be considered before determining the amount payable to the Petitioner for lands proposed to be acquired under The National Highways Act 1956 and pass such other suitable orders as this Honourable Court deems fit and proper in the circumstances of the case and thus render justice.

(Emphasis supplied)

5. Petitioner further submits that for the very same project NH-68 different portion of Petitioner's lands in Survey Nos. 425/3 and 425/4

comprised in T.S. No. 51, Ammapet Village, Salem District, were proposed to be acquired under the National Highways Act, 1956 and

publication was made in terms of Section 3-A of the National Highways Act, 1956 on 2.12.2009 and publication u/s 3G of the National Highways

Act 1956 was issued on 6.7.2010. Fearing, that the Respondents will fix the market value of the lands arbitrarily, the Petitioner filed W.P. No.

16678 of 2010 for a direction to the Competent Authority to fix the market value after giving the Petitioner an opportunity to produce the relevant

materials regarding the market value of the lands.

6. W.P. Nos. 13186, 13286 of 2009, 16678 and 16679 of 2010 were disposed off by a common order dated 25.1.2011 which reads as follows:

11. In view of the undertaking given by the learned Additional Advocate General, these writ petitions are disposed of with a direction to the

competent authority, to determine the market value of the acquired land after permitting the Petitioners to produce documentary and oral evidence

in support of the claim of the market value.

12. It shall also be open to the Petitioners to place all the documentary evidence which are in their possession so as to enable the competent

authority to fix the market value on the date of issuance of notice u/s 3-A of the Act. The Respondents shall be bound by the undertaking given by

the learned Additional Advocate General with regard to the payment of solatium and interest.

13. This order shall not prevent the Petitioners from raising all the plea available to them, to challenge the vires of the Act, in the pending writ

petitions.

14. The parties through their counsels are directed to appear before the competent authority on 04.02.2011 at 10.00 a.m., with all relevant evidence both documentary and oral.

15. With the above observation and direction these writ petitions are disposed of. No. costs. Consequently, connected miscellaneous petitions are closed.

7. The Petitioner states that he went to the office of the Competent Authority on 4.2.2011 and was informed that the second Respondent has gone

on official duty to Villupuram. Hence, the Petitioner sent a letter dated 4.2.2011 seeking 15 days' time to produce the relevant records to show the

market value. On 8.2.2011 when the Petitioner was in Delhi, the second Respondent issued a notice calling upon the Petitioner to appear on

11.2.2011 for enquiry. The Petitioner sent a fax to the second Respondent praying for a week's time. The second Respondent thereafter issued

another notice dated 12.2.2011 calling upon the Petitioner to appear for enquiry on 18.2.2011. On that day, the Petitioner appeared before the

second Respondent along with an advocate and produced relevant records to show the market value. They also pleaded for further time to

produce further documents. It is further pleaded that the Petitioner wants to summon the Village Administrative Officer and other private individuals

to let in oral evidence regarding market value, because there was No. sales in that area. According to the Petitioner, the lands proposed to be

acquired under the National Highways Act, 1956 is within the Salem Corporation Limit and the prevailing market value of the said land sought to

be acquired is Rs. 32,292/- per square meter. According to the Petitioners, the authority, who took charge after 2.2.2011, informed the Petitioner

that she will fix a sum of Rs. 300/- persquare feet as compensation and that according to the Petitioner, is not the market value and the second

Respondent's stand on the issue of compensation is arbitrary.

8. Petitioner further states that almost the entire front portion of the Petitioner's property is proposed to be acquired. Because of this severance,

the remaining portion of the land will lose its value. Consequently, it is contended that the Petitioner's transport business in which about 700

persons are working will be affected. Petitioner is compelled to change his place of business which involves a huge costs. The land in Ammapet

Village has been sold for Rs. 1,700/- per square feet and that is 300 meters away from the Petitioner's land, proposed to be acquired. The

Competent Authority is not acting as per the orders of this Court passed in W.P. No. 13286 of 2009 and W.P. No. 16678 of 2010 and their

action is arbitrary and whimsical.

9. Petitioner's lands are acquired by means of two separate 3A notifications one dated 13.6.2008 and the second notification dated 2.12.2009.

Hence, the Petitioner has filed two Writ Petitions as above.

10. The brief facts of the case in W.P. Nos. 4568 and 4569 of 2011 are as follows: Petitioner and his wife Tmt. Santhi, the fourth Respondent are

the absolute owners of the lands in Survey Nos. 413/3, 415/1C, 428/1, T.S. No. 17/1,19/1, 13/1A, Ammapet Rural Village, Salem Taluk, Salem

District. They purchased the same by way of sale deed dated 17.5.1993. They are in possession of the lands.

11. The other facts are similar to the facts mentioned in W.P. Nos. 4566 and 4567 of 2011. The Petitioner, Mr. V. Saravanan,, earlier filed W.P.

Nos. 13186 of 2009 and 16679 of 2010, which were disposed of by a common order dated 25.1.2011, referred to supra.

12. At the time of hearing (i.e.) on 18.3.2011, it was stated that the second Respondent issued notice u/s 3E(1) of the National Highways Act and

the same was served on the Petitioner in W.P. Nos. 4566 and 4567 of 2011 on 16.3.2011 and on the Petitioner's mother in W.P. Nos. 4568 and

4569 of 2011 on 16.3.2011 without mentioning the quantum of the compensation amount that was deposited with the competent authority. This

Court thereafter passed an order of interim stay till 24.3.2011. On 24.3.2011, the interim stay was extended until further orders of Court.

13. Heard Mr. T.V. Ramanujam, learned senior counsel for the Petitioner in all the writ petitions; Mr. J.Ravindran, learned Counsel for the first

Respondent in all the writ petitions and Mr. M.Dhandapani, the then learned Special Government Pleader appearing for the second Respondent in

all the writ petitions and Mr. P.Wilson, learned Senior Counsel, the then Additional Advocate General, appearing for the third Respondent in all

the writ petitions.

14. On 28.2.2011 when the matter was listed for admission, on behalf of the Respondents the following counsel took notice for the respective

Respondents, viz., Mr. J.Ravindran, learned Counsel for the first Respondent in all the writ petitions; Mr. M.Dhandapani, learned Special

Government Pleader for the second Respondent in all the writ petitions and Mr. P.Wilson, the then learned Additional Advocate General for the

third Respondent in all the writ petitions. At that point of time, the learned senior counsel appearing for the Petitioners sought permission of this

Court to delete Respondents 4 and 5 in W.P. Nos. 4566 and 4567 of 2011 and the fourth Respondent in W.P. Nos. 4568 and 4569 of 2011.

Accordingly, Respondents 4 and 5 in W.P. Nos. 4566 and 4567 of 2011 and the fourth Respondent in W.P. Nos. 4568 and 4569 of 2011 were

deleted and the Registry was directed to make necessary corrections. When the matters were listed on 2.3.2011, at the request of the learned

Counsel for the Respondents, the matters were adjourned to 3.3.2011. The matters, however, were listed on 7.3.2011 and adjourned to 9.3.2011

and on the said date, the matters were directed to be listed on 14.3.2011. Thereafter, the matters were listed on 18.3.2011 and in view of the

notice issued u/s 3E(1) of the National Highways Act, interim stay was granted till 24.3.2011 and it was extended until further orders. A counter

affidavit has been filed by the second Respondent on 14.3.2011 and the Petitioners have filed reply affidavit on 22.3.2011. Thereafter, the matters

were argued at length by the respective learned Counsel.

15. Mr. T.V.Ramanujam, learned Senior Counsel appearing for the Petitioners contended as follows:

(i) The direction issued by this Court by its common order dated 25.1.2011 in W.P. Nos. 13186 and 13286 of 2009, 16678 and 16679 of 2010

has not been complied with and, therefore, the entire proceedings is vitiated.

(ii) The competent authority has not followed the procedure laid down in Section 3G(7)(a) to (d) of the National Highways Act and, therefore, the

writ petitions have been filed to declare the proceedings as null and void.

(iii) The stand of the Respondents that they gave sufficient opportunity to the Petitioners on 4.2.2011, 8.2.2011, 11.2.2011 and 18.2.2011 is not

true, as there was No. hearing on 4.2.2011, 8.2.2011 and 11.2.2011. On 18.2.2011, when the Petitioners appeared along with their Advocate,

the Petitioners wanted further time to produce further documents regarding the business and to let in oral evidence. The competent authority

adjourned the matter to 23.2.2011. The last adjournment given by the competent authority was too short, as 19th and 20th February 2011 were

Saturday and Sunday leaving only two working days (i.e.) 21.2.2011 and 22.2.2011. The Petitioners did not have sufficient time to submit further materials.

(iv) On 18.2.2011 the data sale deeds were not made available to the Petitioners and No. opportunity was given to the Petitioners to comment upon the data sale deeds. Hence the proceedings are arbitrary.

(v) The Respondents have stated in the counter-affidavit that the award was passed on 28.2.2011. Therefore, the entire proceedings culminating by way of an award, is hit by the doctrine of lis pendens.

(vi) The sale deeds relied upon by the competent authority fixing the market value of the lands proposed to be acquired were not shown to the Petitioners and, therefore, it is in violation of Section 3G(7)(a) to (d) of the Act. He pleaded legal malice.

(vii) The documents relied upon by the competent authority relates to the sale effected between the siblings and does not reflect the true value, as the transaction is between the close relations. It cannot be the real market value. The sale deeds produced to establish the market value have not been considered.

(viii) The competent authority has not fixed the compensation for the severance of the Petitioners' lands and for the loss of business. Further, no compensation has been fixed for the damages caused to the Petitioners and the acquisition of the lands is in a zig zag manner rendering the remaining lands unusable.

(ix) There are two separate notifications for different extent of lands relatable to two different periods. The said notifications are relatable to the years 2008 and 2009 and, therefore, there cannot be a single award. The issuance of notice u/s 3E(1) by the competent authority knowing fully well that the matter is pending before this Court itself shows arbitrariness on the part of the Respondent authority.

16. The learned Senior Counsel in support of plea in paragraph 15 (v), relied on the judgment in Goudappa Appaya Patil v. Shivari Bhimappa

Pattar and Anr. reported in AIR 1992 KAR 71 to contend that the doctrine of lis pendens will apply to the proceedings initiated under Articles

226 and 227 of the Constitution of India and on the same lines he also relied upon the judgments in Chetak Electric and Iron Industries Vs.

Rajasthan Finance Corporation, and Sanjay Verma v. Manik Roy and Ors. reported in (2006) 13 SCC 608.

17. Insofar as the first plea that the competent authority has acted in violation of the orders of this Court is concerned, the learned Senior Counsel

for the Petitioners relied on the following judgments:

(1) Surjit and others Vs. Harbans Singh and others etc. etc., .

(2) Delhi Development Authority v. Skipper Construction Company (P) Ltd., and Anr. reported in 1996 (II) CTC 557.

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

(4) Tamilnad Mercantile Bank Ltd. and Others Vs. Tamilnad Mercantile Bank Shareholders Welfare Association, .

(5) T.N. Godavarman Thirumulpad through the Amicus Curiae Vs. Ashok Khot and Another, .

(6) All Bengal Excise Licensees" Association v. Raghabendra Singh and Ors. reported in 2007 (11) SCC 374.

18. Learned senior counsel for the Petitioners relied upon the decision in Kalabharati Advertising Vs. Hemant Vimalnath Narichania and Others, to

plead legal malice and stated that since the authority acted contrary to the provisions of the Act, more particularly, Section 3G(7)(a) to (e)

disregarding the rights of the Petitioners causing prejudice, the proceedings will be hit by the principle of legal malice.

19. He further relied upon the judgment in Land Acquisition Officer and Mandal Revenue Officer Vs. V. Narasaiah, to state that the sale deeds

produced to establish the market value of the lands is admissible even if the party to such sale is not examined. On the same issue he relied upon

the decision in D.B. Rudrani and Anr. v. The Land Acquisition Officer (Sub Collector), Dharmapuri, Dharmapuri District and Anr. reported in

2001 (2) CTC 146. He also relied upon the decision in Thomas and Others Vs. Industrial Tribunal and Others, to contend that writ of declaration

can be issued in the facts and circumstances of the present case. He, therefore, prayed for declaration that the land acquisition proceedings should

be held to be null and void.

20. On the contrary Mr. P.Wilson, the learned senior counsel, the then learned

Additional Advocate General appearing for the third Respondent

stated that the writ petition was filed on 22.2.2011 and it came up for admission on 28.2.2011 and the Respondents took notice and sought time to

get instructions. Thereafter, the matter was adjourned to 2.3.2011 and subsequently interim order was granted on 18.3.2011 based on the

consequential proceedings viz., notice u/s 3E(1) of the Act on a contention that the authority is acting arbitrarily. The fact remains that on

28.2.2011 an award was passed and consequently the notice u/s 3E(1) of the Act came to be issued. This was done after giving the Petitioners

sufficient opportunity from time to time, which the Petitioners failed to fully utilise. This Court, while disposing of the batch of writ petitions by a

common order dated 25.01.2011, directed the authority to determine the market value after giving an opportunity to the land owners and enabling

them to produce the relevant documentary and oral evidence in support thereof. Paragraph 11 of the order reads as follows:

11. In view of the undertaking given by the learned Additional Advocate General, these writ petitions are disposed of with a direction to the

competent authority, to determine the market value of the acquired land after permitting the Petitioners to produce documentary and oral evidence

in support of the claim of the market value.

12. It shall also be open to the Petitioners to place all the documentary evidence which are in their possession so as to enable the competent

authority to fix the market value on the date of issuance of notice u/s 3-A of the Act. The Respondents shall be bound by the undertaking given by

the learned Additional Advocate General with regard to the payment of solatium and interest....

14. The parties through their counsels are directed to appear before the competent authority on 4.2.2011 at 10.00 a.m. with all relevant evidence

both documentary and oral.

21. In terms of the order passed as above, opportunity was given to the Petitioners to submit documents. The Petitioners could have tendered the

oral evidence either on 4.2.2011 or on the subsequent dates. On the contrary the Petitioners have been protracting the matter on some pretext or

the other. Hearing was in fact given to the Petitioners on various dates. On 18.2.2011 when the Petitioners appeared with their Advocates, at their

request the hearing was adjourned to 23.2.2001 and the Petitioners failed to utilise the said opportunity and has chosen to rush to this Court.

Therefore, the department cannot be found fault on the ground of not giving sufficient opportunity. This plea is without any basis and is deliberately

made so as to restrain the authority from proceeding with the enquiry relating to determination of compensation. There is No. breach of the

Court's order dated 25.1.2011. The authority has given sufficient opportunity to the Petitioners and did not act in haste as alleged. Since the

acquisition proceedings is for the Highways, the authority has to proceed in the matter taking into consideration the larger public interest and the

number of acquisition proceedings that they will have to undertake for this purpose. Therefore, based on records available, the authorities have

proceeded to determine the compensation. If the award is not to the satisfaction of the Petitioners, it is open to the Petitioners to seek enhancement

of the award in the manner prescribed by law. Without doing so, the Petitioners have rushed to this Court by filing these writ petitions for a

declaration that the proceedings is null and void. He prayed for dismissing the writ petitions with cost.

22. Mr. M.Dhandapani, the then learned Special Government Pleader appearing for the second Respondent and Mr. P.Wilson, learned senior

counsel, the then Additional Advocate General appearing for the third Respondent, further contended that the Honourable Apex Court has time

and again emphasized the need to show restraints in matters relating to acquisition in larger public interest. They relied upon the decision in *Girias*

Investment Private Limited and Anr. v. State of Karnataka and Ors. reported in 2007 (7) SCC 53 vide Para 27 and another decision in *Ramniklal*

N. Bhutta and another Vs. State of Maharashtra and others, .

23. Since the award has been passed even before the interim order was passed, any objection with regard to value or the documents relied upon

for determining the compensation should be challenged before the appropriate forum as prescribed in the Act.

24. Mr. M.Dhandapani, the then learned Special Government Pleader appearing for the second Respondent contended that at this point of time,

the Petitioners will have No. locus standi to comment upon the material that will be relied upon by the competent authority in exercise of his

functions under the Act. What will be the nature of the documents that will be considered and the determination of the compensation based on the relevant materials will be that of the competent authority and the Petitioners cannot dictate terms as to how the authority should proceed in the matter. Clause 7 of Section 3G of the Act gives power to the competent authority or the arbitrator to take into consideration various factors while determining the amount payable as compensation. Section 3-I of the Act empowers the authority to exercise the power of a civil court so as to purposely determine the compensation. It is purely the discretion of the authority to proceed by any one of the methods. Power is given to the authority to exercise such power as may be necessary for determining the just compensation payable.

25. Except giving the Petitioners a right to produce documentary and oral evidence, No. other direction was passed by this Court in its common order dated 25.01.2011 and that was then prayer in the writ petitions of the year 2009 itself. In this case, the Petitioners have given certain documents and have not chosen to let in any oral evidence. Sufficient time was given and that has not been properly utilised and the authority cannot keep the matter pending, so as to permit the Petitioners to appear at their sweet will and pleasure. The then learned Special Government Pleader appearing for the second Respondent submitted that the authority is well within his power to rely upon the copies of documents consistent with the provisions of the Act to determine the market value. If the Petitioners are aggrieved, they have the right to challenge the same in appropriate proceedings. He, therefore, prayed that the writ petitions are totally misconceived and devoid of merits and deserve to be dismissed.

26. The contentions 1, 2 and 3 made by the learned senior counsel appearing for the Petitioners in short, is that the common order of this Court dated 25.1.2011 passed in W.P. Nos. 13186 and 13286 of 2009, 16678 and 16679 of 2010 has not been complied with and the provision of the Section 3G of the Act has not been followed and consequently, there is a failure of the principles of natural justice.

27. Insofar as the plea that No. proper opportunity was given to the Petitioners to submit the documents in terms of the common order dated

25.1.2011 is concerned, we have to look into the order of this Court (VINOD KUMAR SHARMA, J.) which has been extracted in paragraph 6

above. In the common order dated 25.1.2011 in paragraph 11 all that the Court permitted the Petitioners was to produce documentary and oral

evidence in support of the claim of the market value to the competent authority. Petitioners have been called upon to produce documentary

evidence so as to enable the competent authority to fix the market value. The date of hearing was also fixed as 4.2.2011 at 10.00 a.m. and with

the above direction the writ petitions were disposed of.

28. In the light of the above plea made by the Petitioners, it is relevant to refer to certain documents submitted by the third Respondent before this

Court. These documents/representations were given by the Petitioner Rajan Babu to the second Respondent. It is seen from the

representation/letter dated 12.7.2010 that the Petitioner Rajan Babu submitted land documents Doc. No. 2614/2005 and Doc. No. 400/2006

and sought for further time to submit other documents. On 4.2.2011, fifteen days time was sought to produce the copy of the documents as there

was No. hearing. On 8.2.2011 another notice was issued calling upon the Petitioner to appear on 11.2.2011 at 11 a.m. In that notice it has been

endorsed that Rajan Babu is away at Mumbai and, therefore, after he returns from Mumbai the Petitioner will appear on Monday (i.e.) 11.2.2011.

In the same manner, notice to the another Petitioner Shri Saravanan was endorsed by stating that they wanted time. Thereafter, Rajan Babu issued

another letter on 11.2.2011 seeking adjournment of the hearing to 18.2.2011. In the same manner, another Petitioner Shri Saravanan also sought

for time.

29. On 18.2.2011, when the Petitioner appeared before the authority along with the Advocate there was No. protest that the authority was acting

arbitrarily or illegally. The Petitioner has earlier given certain documents and at that point of time, they have not stated that they wanted to let in oral

evidence or they are having further documents in their hand which needs to be produced. From the narration of events, it is clear that the

Petitioners are not clear as to what course of action that they want to take. On the one hand the Petitioners sought for time to produce further

documents, but, there was no request to let in any oral evidence. Hence, there was No. reason for the authority to postpone the hearing. If the

Petitioners wanted to give the documents, it could have been sent either in

person or by post immediately thereafter. This Court gave a specific date of hearing, which was adjourned and both the Petitioners and Respondents have no issues on that. Thereafter, the Respondents gave sufficient time to the Petitioners, which was not properly utilised as is evident from the narration of facts as above. On 23.2.2011 by quoting W.P.SR. No. 19886 of 2011 the Petitioner has informed the Authorised Officer cum Special District Revenue Officer to postpone the enquiry stating that the writ petition to declare the proceedings as null and void has been filed. What is relevant is that the acquisition proceedings did not crop up suddenly. It has been initiated as early as on 6.5.2008 and paper publication was made on 13.6.2008. The Petitioners gave their objections on 3.7.2008 which got rejected on 5.9.2008.

30. Thereafter, Petitioners filed a series of writ petitions and one of the reliefs was to give opportunity to produce the documents for the purpose of determining the compensation. The entire exercise is going on for more than two years and the Petitioners cannot plead ignorance or sudden turn of events and state that they did not have sufficient time to address the issue of compensation. In fact, when paper publication relating to determination of compensation was published on 5.6.2009, the Petitioners filed W.P. No. 13286 of 2009 etc., and it came to be disposed of by a common order in January 2011. In such circumstances, the Petitioners who are fully aware of the acquisition proceedings and compensation proceedings cannot plead total ignorance or lack of opportunity to submit the documents. The plea of violation of principles of natural justice, therefore, fails.

31. We shall now consider the scope of Sections 3A and 3G of the National Highways Laws (Amendment) Act, 1997. Section 3A of the National Highways Laws (Amendment) Act, 1997 reads as follows:

3A. Power to acquire land etc. - Where the Central Government is satisfied that for a public purpose any land is required for the building, maintenance, management or operation of a national highway or part thereof. It may, by notification in the Official Gazette, declare its intention to acquire such land.

(2) Every notification under Sub-section (1) shall give a brief description of the land.

(3) The competent authority shall cause the substance of the notification to be published in two local newspapers, one of which will be in a vernacular language.

Section 3G of the National Highways Law (Amendment) Act, 1997 reads as follows:

3G. Determination of amount payable as compensation.- (1) Where any land acquired under this Act, there shall be paid an amount which shall be determined by order of the competent authority.

(2) Where the right of user or any right in the nature of an easement on, any land is acquired under this Act, there shall be paid an amount to the owner and any other person whose right of enjoyment in that land has been affected in any manner whatsoever by reason of such acquisition an amount calculated at ten per cent, of the amount determined under Sub-section (1), for that land.

(3) Before proceeding to determine the amount under Sub-section (1) or Sub-section (2), the competent authority shall give a public notice published in two local newspapers, one of which will be in a vernacular language inviting claims from all persons interested in the land to be acquired.

(4) Such notice shall state the particulars of the land and shall require all persons interested in such land to appear in person or by an agent or by a legal practitioner referred to in Sub-section (2) of Section 3C, before the competent authority, at a time and place and to state the nature of the respective interest in such land.

(5) If the amount determined by the competent authority under Sub-section (1) or Sub-section (2) is not acceptable to either of the parties, the amount shall, on an application by either of the parties, be determined by the arbitrator to be appointed by the Central Government.

(6) Subject to the provisions of this Act, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to every arbitration under this Act.

(7) The competent authority or the arbitrator while determining the amount under Sub-section (1) or Sub-section (5), as the case may be, shall take into consideration

(a) the market value of the land on the date of publication of the notification u/s 3A;

(b) the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the severing of such land from other land;

(c) the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the acquisition injuriously affecting his other immovable property in any manner, or his earnings;

(d) if, in consequences of the acquisition of the land, the person interested is compelled to change his residence or place of business, the reasonable expenses, if any, incidental to such change.

32. In the present case, as has already been observed by the learned single Judge in the common order dated 25.1.2011, the notice u/s 3A of the

Act has been issued, objection u/s 3C was called for, considered and rejected. Petitioners filed the earlier round of writ petitions for a mandamus

to direct the Respondents to give opportunity to place all documents showing their right, title and interest for the lands under acquisition and to let

in evidence in support of the market value of the land under acquisition on the date of notice u/s 3A of the Act. Thereafter, the determination of

compensation will have to be made consequent to the declaration u/s 3D of the Act. The land, therefore, already vests with the Respondents and

the only issue to be decided is the compensation u/s 3G of the Act. A procedure has been prescribed under the Act for determination of market

value in terms of Section 3G of the Act. That is also the nature of direction of the learned Judge in the common order dated 25.1.2011. All that the

Petitioners are entitled to, is an opportunity to produce evidence to support the plea of market value of the land acquired. This opportunity, as has

already been set out in forgoing paragraphs, has been given to the Petitioners on 18.2.2011 and on 23.2.2011 ignoring the previous adjournment.

Petitioners also produced some documents on 18.2.2011. At No. point of time, Petitioners gave the list of persons whose oral evidence is relied upon.

33. It will be relevant to note that the market value of the land will be the date of publication of Notification u/s 3A. Section 3A Notification was

published on 13.2.2008 and 21.2.2009. Therefore, more than two years had

lapsed from the date of publication and that is sufficient time for the Petitioners to gather and produce documents that they may rely upon. The proceedings did not spring in surprise.

34. The writ petition No. 13286 of 2009 has been filed to direct the second Respondent therein to give the Petitioners opportunity to place all the documents showing the right, title and interest for the land described in the schedule for fixing the compensation based on the market value. It, therefore, follows that the Petitioners were aware of the issue relating to fixation of market value for determining the compensation when the above writ petitions were filed in the year 2009. It should be presumed that the Petitioners were aware of their plea for compensation based on the market value even in the year 2009. It, therefore, follows that the Petitioners, in spite of knowledge and sufficient time, did not produce further documents except the one which has already been produced. Therefore, the plea of not following the order of this Court dated 25.01.2011 and violation of the provision of Section 3G of the Act does not hold good.

35. The next contention of the learned senior counsel appearing for the Petitioners that data sale deeds were not made available to the Petitioners and No. opportunity was given to the Petitioners to comment on the data sale deeds cannot be countenanced as there was No. specific direction by this Court in its common order dated 25.1.2011 directing the Respondents authorities to furnish all documents relied upon by them to the Petitioners. In the common order dated 25.1.2011 in paragraphs 4, 5 and 11, a specific direction was given to the competent authorities to permit the Petitioners to produce documentary and oral evidence in support of the claim for market value. On the contrary, No. direction was issued to the competent authorities to produce all material evidence to the Petitioners to confront the same.

36. The scope of Section 3G enquiry is specific. u/s 3G(7) of the Act, the authority is bound to take into consideration: (i) The market value of the land on the date of publication of the notification u/s 3A; (ii) the damage, if any, sustained by the person interested at the time of taking possession of the land; (iii) the damage, if any, sustained by the person interested at the time of taking possession of the land due to acquisition injuriously affecting his other immovable property or his earnings and (iv) the consequence

of change in residence or place of business consequent to acquisition of land. Section 3G(4) of the Act provides notice to the person to appear in person or by agent or by legal practitioner before the competent authority to state the nature of interest in the land. Therefore, the plea of the Petitioners that data sale deeds should be made available to the Petitioners is not a requirement in a proceedings u/s 3G of the Act. Therefore, this plea of legal malice is untenable.

37. The next plea of the learned senior counsel appearing for the Petitioners is that the present writ petitions have been filed and are pending.

Hence, the award passed on 28.2.2011 is hit by the doctrine of lis pendens. The writ petitions were listed for admission on 28.2.2011. Thereafter,

it got adjourned to various dates as stated in paragraph 14 above. The interim order was granted consequent to notice issued u/s 3E(1) of the Act

on 18.3.2011, (i.e.) after 18 days of the first hearing. The Respondents thereafter took an instruction and produced the award which has already

been passed. No. order has been passed restraining the authorities from passing the award. Therefore, the plea of lis pendens is not justified.

38. The meaning of Lis Pendens as per P.Ramanatha Aiyar's Advanced Law Lexicon 3rd Edition (Extensively Revised and Enlarged Volume 3)

2005 is as follows:

Lis Pendens. (Lat). Lis means a suit, action controversy, or dispute, and lis pendens means a pending suit. The doctrine denotes those principles

and rules of law which define and limit the operation of the common-law maxim pendente lite nihil innovetur, that is, pending the suit nothing should

be changed.

A depending process or suit; an action in the course of being litigated; litiscontestation. (Trayner) A pending suit.

As soon as proceedings are commenced to recover or charge some specific property [Ex parte Thornton (1867) 2 Ch. 178] there is #lis

pendens# - a pending suit, the consequence of which is that until the litigation is at an end neither litigant can deal with the property to the prejudice

of the other.

A lis pendens is defined in Wharton's Law Dictionary as a pending suit. #Lis# means a suit, action, controversy, or dispute, and dispute is a conflict

or contest, while controversy is a disputed question, a suit at law; and the

pendens of the lis is not disturbed on in any manner affected by the fact of an appeal taken from one Court to another. The litigation or contest still goes on.

The rule of #lis pendens# is statutory and imposes two conditions: (i) the existence of a contentious suit, and (ii) that the transfer should be during

its active prosecution in a Court of the kind described in Section 52, Transfer of Property Act (4 of 1882). (31B.393:9 Bom LR 530.)

39. The case of Sanjay Verma v. Manik Roy and Ors. reported in (2006) 13 SCC 608 is the suit for specific performance of contract with a

further prayer for declaration and permanent injunction restraining the Defendants from interfering in the peaceful possession of the Plaintiff.

Temporary injunction was granted in terms of Order 39 Rules 1 and 2 read with Section 151 CPC and pending suit, two Defendants transferred

aportion of the suit land under various sale deeds in favour of the third parties, who in turn transferred the same in favour of other parties. In that

back ground of the matter, an application was filed by the third party purchaser in terms of Order 1 Rule 10 CPC to implead him and to contest

the suit. The said matter came up before the Apex Court. The question was whether the transfer of property pending the suit is hit by Section 52 of

the Transfer of Property Act. The Apex Court considered the scope of Section 52 of the Transfer of Property Act and the rights of the transferee

pending the suit. The said decision of the Apex Court will have No. bearing to the facts of the present case, as has been clearly explained by this

Court in paragraph 14 above, that the writ petitions were not admitted and No. interim order was passed restraining the authority from passing the

award. The Respondents' counsel were asked to get instruction on 28.2.2011. The fact remains that even before they could communicate and get

instructions, the Respondents authorities had already passed the award on 28.2.2011. None of the parties were aware of the passing of the award

and it is only after the issuance of the notice on 18.3.2011 (i.e.) after nearly 18 days, that interim stay was granted on the premise that No. award

was passed. It, therefore, cannot be said that the Respondents authorities had passed the award after coming to know that the writ petitions have

been admitted. In any event, there was No. interim order granted restraining the authority from passing the award on 28.2.2011 on which date the

award was infact passed. The principle of lis pendens will not apply to the facts of the present case.

40. Chetak Electric and Iron Industries Vs. Rajasthan Finance Corporation, is the case of recovery of loan by auction sale of property pending the

writ petition on the ground that the transfer is hit by lis pendens. In that case all that has been said is that the auction was not properly conducted as

there was No. proper and wide publicity, besides, it is stated that the two writ petitions were filed and pending and therefore, it was held that the

transfer of property pending the writ petition was hit by the principles of lis pendens. In that case, No. particular date was mentioned as to when

the writ petition was admitted, whether the Respondents had entered appearance. Since the facts are not clear and since the said facts will not

apply to the facts of the present case, it can be clearly distinguished, in view of the dates and events mentioned in paragraph 14 above.

41. In the case of Goudappa Appaya Patil v. Shivari Bhimappa Pattarand Anr. reported in AIR 1992 KAR 71, in paragraph 14, the principles

underlying Section 52 of the Transfer of Property Act applicable to the writ proceedings has been reiterated. There is No. dispute on that. The

facts in that case is that a party purchased land from a borrower of a society. The auction purchaser's right was safeguarded by virtue of a writ

petition which was pending long before the sale was said to be effected by the borrower of the society to the third party. The facts in that case

clearly establishes that prior to the sale, the writ petition was pending and the Defendants in the suit filed the writ petition challenging the order of

the Tribunal and that the sale in question (i.e.) on 27.8.1966 was effected during the pendency of the writ petition. In that case, the writ petition

was allowed and the Tribunal's order was set aside and the orders of the Deputy Commissioner and the Divisional Commissioner affirming the

auction sale were restored. Therefore, the doctrine of lis pendens was made applicable stating that the writ petition was pending. The said decision

will not be applicable to the facts of the present case, as even as on the date of notice before admission (i.e.) on 28.2.2011, the award was

passed. Therefore, mere filing of the writ petitions would not attract the principle of lis pendens. The said decision does not apply to the facts of the

present case.

42. The next contention of the learned senior counsel for the Petitioners is that the competent authority was acted upon in violation of the Court

order, relying upon the decision in Surjit and others Vs. Harbans Singh and others etc. etc., . This decision relates to alienation of apart of the suit

property pending the civil suit. In the present case, the first round of writ petitions were already decided with a specific direction to the authority to

determine the market value of the acquired land after permitting the Petitioners to produce documentary and oral evidence in support of the claim

of the market value. There is a positive direction by the learned Single Judge of this Court while disposing of the batch of writ petitions

on 25.1.2011 to pass award after hearing the parties. There is a clear direction. The question is whether proper opportunity was given to the

Petitioners. Since I have already held that the opportunity was in fact given and has been availed by the Petitioners, the plea that the Respondents

authorities have not complied with the order of this Court does not arise. Therefore, the above case does not apply to the facts of the present case.

43. The decision in Delhi Development Authority v. Skipper Construction Company(P) Ltd., and Anr. reported in 1996 (II) CTC 557 is relied

upon by the learned senior counsel for the Petitioners to contend that the acts done by the Respondents authorities in violation of the orders of this

Court can be corrected by exercising inherent powers to prevent the abuse of process of law. There appears to be No. act done by the

Respondents in violation of the orders of the Court. On the contrary, they are bound to obey the direction of this Court in its order dated

25.1.2011. The facts of the present case as has been set out in paragraphs 28, 29 and 30 above, the number of hearings and the documents

submitted by the Petitioners would clearly show that the earlier order of this Court has been complied with. Therefore, the said decision does not

further the case of the Petitioners.

44. The decision in Hindustan Petroleum Corporation Ltd. Vs. Darius Shapur Chenai and Others, has been relied upon by the learned Counsel for

the Petitioners. It is the case related to proceeding under the Land Acquisition Act 1894 and the scope of Section 5A enquiry. One of the issues

considered by the Apex Court was judicial review of administrative action and the decision making process and the scope of interference by the

Court as to whether the statutory authority exercised its power in a fair and reasonable manner, primarily, touching upon illegality, irrationality and procedural impropriety. In the present case, the writ petitions have been filed even before an award was passed. The only premise appear to be that the authority has indicated that it will look into certain sale deeds only. But on the date when the writ petitions were moved, the award has been passed by the competent authority after few adjournments and allowing the Petitioners to submit the documents on one hearing (i.e.) on 18.3.2011. When the award has been passed, the Petitioners will have to necessarily challenge the said award on any of the grounds that is stated by the Honourable Apex Court referred to above. Merely on the basis of the affidavit, the Court cannot go into the allegations of illegality, irrationality or procedural impropriety. When the writ petitions were moved before the Court on 28.2.2011, the authority had already passed the award. If the Petitioners are aggrieved, the award should be challenged. No. writ can be entertained on the premise that the Petitioners apprehend arbitrariness on the part of the authority in the proceedings by stating so in the affidavit. This assume importance since the Petitioners were aware of the acquisition proceedings long before and the passing of the declaration u/s 3D of the Act. The Petitioners had knowledge.

45. Therefore, the only question to be decided is the determination of compensation. Petitioners have earlier filed writ petitions for the purpose of determining appropriate compensation. Viewed from that angle, it cannot be said that there was arbitrariness on the part of the authority. The plea of lack of opportunity to the Petitioners to submit records or that the authorities are acting in defiance of earlier order of this Court has No. basis.

The acquisition proceedings as has been pointed out by the Respondent is in respect of several tracts of land and the authority has to pursue each one of the same in a time bound manner. Therefore, the decision in Hindustan Petroleum Corporation Ltd. Vs. Darius Shapur Chenai and Others, has no relevance to the facts of the present case.

46. Learned senior counsel for the Petitioners relied upon paragraphs 24 and 25 of the Division Bench decision of Tamilnad Mercantile Bank Ltd. and Others Vs. Tamilnad Mercantile Bank Shareholders Welfare Association, to highlight that the direction of this Court is not followed. This case

only emphasize the fact that the order of the Court should be complied with and the issue is in relation to proceedings under Contempt of Courts

Act 1971. In this case, the order dated 25.1.2011 specifically directed the hearing to be held on 4.2.2011 and thereafter it was adjourned at the

behest of both sides and the hearing was conducted on 18.3.2011 instead of 4.2.2011. The Petitioners were given opportunity and they submitted

documents. Therefore, the plea of disobeying the order of the Court does not arise and the said decision does not in any way support the case of

the Petitioners.

47. Similarly, the case in T.N. Godavarman Thirumulpad through the Amicus Curiae Vs. Ashok Khot and Another, is a case under Contempt of

Courts Act, 1971 and the said principle will have No. application to the facts of the present case as the Respondents have not disobeyed the order

of this Court.

48. The decision in the case of All Bengal Excise Licensees' Association v. Raghavendra Singh and Ors. reported in 2007 (11) SCC 374, para

26 also relates to proceeding under Contempt of Courts Act 1971 and the allegation was that there was violation of orders of Court. Much

emphasis was laid down by the learned senior counsel for the Petitioners on paragraph 27 of the decision to state that the Court can direct the

wrong doer to undo the wrong done by him where there is breach of the order of the Court. In this case, such a situation does not arise since the

specific direction of this Court dated 25.1.2011 has been complied with by the last of the hearing held on 18.3.2011 and further opportunity was

given on 22.3.2011 which the Petitioners failed to avail. Therefore, all the judgments relied upon by the Petitioners that there is a violation of the

order of the Court will not apply to the facts of the present case.

49. Petitioners' next plea of legal malice placing reliance on Kalabharati Advertising Vs. Hemant Vimalnath Narichania and Others, has No. basis.

In any event it cannot be considered at this point of time. Petitioners have to necessarily challenge the award as it is the stand of the Petitioners that

it is contrary to the provisions of the Act, more particularly, Section 3G of the Act. The writ petitions are not challenging the award, but the

proceedings at the stage of enquiry itself. Hence, the said plea is premature even at the time of filing the writ petitions. On the contrary, the said

plea is an after thought in view of the statement by the Respondents that the award has been passed on 28.2.2011, when the writ petitions were moved. Hence, the said contention is rejected.

50. The next contention as set out in paragraph 15 (vii) is that the sale deeds produced to establish the market value are admissible even if the parties to the sale deeds are not examined. On the principle of law, there cannot be any doubt. But this plea only clarifies to the fact that the

Petitioners have, in fact, produced sale deeds to the authority. Therefore, the earlier plea of violating the orders of Court or doctrine of *lis pendens*,

legal malice will fall to the ground. If the authorities have not considered the documents produced by the parties in the proper perspective including

the sale deeds between siblings, they can pursue the matter before the Arbitrator. This is provided under the statute. The Petitioners cannot have

any grievance as the nature of proceedings before the competent authority and Arbitrator are set out in Section 3(G) of the Act.

51. The decision in *D.B. Rudrani and Anr. v. The Land Acquisition Officer (Sub Collector), Dharmapuri, Dharmapuri District and Anr.* reported in

2001 (2) CTC 146 is relating to determination of compensation at the appellate stage by considering sale deeds produced. The same analogy

would apply to the Petitioners as well. Therefore, the remedy available to the Petitioners is to proceed as against the award passed and establish

the case for higher compensation. The same principle applies in the case of *Land Acquisition Officer and Mandal Revenue Officer v. V. Narasaiah*

reported in JT 2001 (3) 157.

52. The next contention as set out in paragraph 15 (iv) and (vi) raised by the learned senior counsel appearing for the Petitioners is that sale deeds

relied upon by the competent authorities to fix the market value of the lands proposed to be acquired were not shown to the Petitioners and

therefore, there is a violation of Section 3G(7)(a) to (d) of the Act. This issue was considered by me earlier where it has been clearly held that

there is no mandate on the competent authorities to produce all evidence to the Petitioners to rebut the same. What the Petitioners want is in the

nature of a show cause notice and such a plea is not in terms of the Act. The authorities are bound to take into consideration all relevant records

produced by the Petitioners. The competent authorities are under no obligation

to furnish the records to the parties before passing of the award.

The plea made in paragraph 15 (viii) that the compensation has not been properly determined can be canvassed before the Arbitrator on all

aspects. The plea in paragraph 15 (ix) that for the two separate notifications, two awards have to be passed and the single award is bad, is an

issue which will have to be considered if the award is challenged which is not the case here.

53. In view of the above, the various decisions relied upon by the Petitioners does not support the case for setting aside the proceedings at this

stage when the writ petitions have been filed. The various objections raised by the Petitioners can be pursued in the arbitration proceedings or in

appropriate proceedings challenging the award.

54. The relief sought for is declined. Giving liberty as above all the writ petitions are disposed of. Consequently, the interim stay granted in the

miscellaneous petitions is vacated the same are closed. No costs.