
(2012) 11 MAD CK 0002
In the Madras High Court
Case No : Writ Petition No. 42014 of 2006

Kumaresh Narendra

APPELLANT

Vs

Secretary to Government

RESPONDENT

Date of Decision : 19-11-2012

Acts Referred:

Constitution of India, 1950 — Article 39

Land Acquisition Act, 1894 — Section 10, 10(1), 11, 12, 14

Citation : (2013) 1 MLJ 338 : (2013) WritLR 134

Hon'ble Judges : C.T. Selvam, J

Bench : Single Bench

Advocate : N.R. Chandran, for V.R. Rajasekaran, for the Appellant; R. Raheswaran, Special Government Pleader (W), for the Respondent

Final Decision : Allowed

Judgement

C.T. Selvam, J.—Petitioner, a minor, represented by his mother, informs of having become entitled to extent of lands under will of his

grandfather dated 7.3.1948 and two codicils thereto dated 3.3.1950 and 14.10.1950. An extent of 316.89 acres was acquired by the

respondents 1 and 3 even in the year 1972 under the Land Acquisition Act 1894 for the purpose of construction of the Palar Porundalar dam.

Pursuant to taking of possession, the land was handed over to the Public Works Department and the dam was constructed in 1972. The lands are

within the dam water spread area. Respondents had issued notifications on 29.3.1972, 5.4.1972, 12.4.1972, 3.5.1972 and Section 5(A) enquiries

were also held on 16.5.1972, 6.7.1972, 18.7.1972 and 19.7.1972. In the meanwhile, possession had been taken and the dam had been

constructed. A notification u/s 18(1) of the Tamil Nadu land reforms (fixation of ceiling on land) Act 1961 had been issued on 22.7.1981 and the

respondents had failed to pursue the process set upon by them under the land acquisition act. Informing that such a course had been adopted by

the respondents in respect of lands belonging to Ms. Narendra Dairy Farms Private Limited and the same had been held to be bad under orders of

this Court in W.P. Nos. 119 and 120 of 1974 dated 9.4.1979, that appeal against such findings had been dismissed in W.A. No. 576 of 1979

under orders dated 6.11.1985 and further appeal to the Supreme Court also stood dismissed, petitioner seeks relief as prayed for. In the counter

affidavit of the respondents, it is contended that the holdings of the petitioner's father attracted the provisions of the Tamil Nadu land reforms

(fixation of ceiling of land) act 1961. His holdings as on 6.4.1960 were determined and a draft statement u/s 10(1) of the land reforms act was

prepared and published in the Tamil under Government Gazette dated 1.9.1965. The final statement u/s 12 of such act was published in the

government Gazette dated 29.3.1972. In G.O. Ms. No. 1389 revenue dated 11.6.1981 notification u/s 18(1) of the act declaring excess an extent

of 3450.231/4 ordinary acres equivalent to 1099.90 standard acres was approved and published in Tamilnadu government Gazette dated

22.7.1981. Action was taken under the provisions of the land acquisition act in respect of the same land towards construction of the Palar

Porundalar dam without informing the fact thereof to the Land Reforms Department. It is informed that the landowner i.e. the petitioner's father

had moved W.P. No. 2842 of 1992 before this Court seeking a direction for deposit of the compensation amount for lands covered in the

notification issued u/s 4 of the land acquisition act. This Court under orders dated 24.11.1999 had observed that the notification u/s 4(1) of Land

Acquisition Act was withdrawn as a notification u/s 18(1) of the land reforms act already was published and the lands covered by the land

acquisition proceedings were declared as surplus already under such act. This Court had directed the Assistant Commissioner (land reforms)

Dindigul to issue notice to the landowner and after conducting proper enquiry, fix the compensation and to pass orders according to law. Enquiry

under Rule 45(1) of the Tamil Nadu land reforms (fixation of ceiling on land) rules 1962 was conducted and under orders dated 5.7.2006 the

compensation was determined at Rs. 6,46,794. The orders have been served on the landowners on 8.7.2006. The draft assessment roll had been

prepared and published in the Tamil Nadu government Gazette dated 9.8.2006 and served on the landowner on 1.9.2006. In answer to

objections raised by the mother of the petitioner, an order u/s 50(4) of the Tamil Nadu Land Reforms (fixation of ceiling on land) Act 1961 was

passed on 23.10.2006 and served on the landowner as also the petitioner's mother on 20.11.2006. Thereafter, the final assessment roll had been

published in the Tamil Nadu Government Gazette on 29.11.2006 and served on the landowner as also the petitioner's mother on 26.12.2006. It is

informed that owing to an order of stay granted in the present proceedings the compensation payable under the land reforms act for the lands in

question could not be determined. It is contended that as the will in favour of the petitioner was of the year 1950, the notification u/s 18(1) of the

Land Reforms Act having been issued on 22.7.1981 and the lands in question having been taken over by government thereunder, the petitioner

who only could inherit lands held by his father, could not claim an inheritance of lands that have fallen into the hands of government long before his

birth in 2001. It is contended that as observed by this Court in its order W.P. 2842 of 1992 dated 24.11.1999, the notification u/s 4 of the land

acquisition act stood withdrawn as a notification u/s 18(1) of the land reforms act had already been published. The lands in question had been

found to be surplus holdings as on 6.4.1960. Section 4 of the Tamil Nadu Land Reforms Act 1961 contained a non obstante clause, the lands

were required for public purpose as construction of dam is also an agrarian act, the decisions of this Court in W.P. Nos. 119 and 120 of 1976 and

connected proceedings could not serve the petitioner's purposes and hence the writ petition is to be dismissed.

2. We have heard Mr. N.R. Chandran learned senior counsel for the petitioner on 18.7.2012 and 23.7.2012. Despite opportunities provided

there have been no arguments advanced on behalf of the respondents. Informed as we were that the matter had been argued twice over before

other judges, this Court had reserved orders on 2.8.2012 granting liberty to the respondents to submit their written arguments. Till date, the

respondents have not done so.

3. Learned senior counsel for petitioner submitted that in identical factual circumstance, the respondents had given a go by to proceedings under

the land acquisition act and proceeded under the land reforms act. A learned single judge of this Court under orders in W.P. Nos. 119 and 120 of

1974 dated 9.4.1979 had directed that the respondents go by the land acquisition act. This decision stood confirmed up to the apex Court. He

submitted that the lands in question lay submerged owing to the construction of the Palar Porundalar dam. The purpose of the land reforms act was

to make available land held in excess of the ceiling limit to the landless towards their carrying out agricultural operations thereupon. Since such

purpose could not be served in the instant case, the land reforms act could not be resorted to. He next contended that even if it be taken that both

the land acquisition act as also the land reforms act would apply, that which was more advantageous to the land owner ought to be applied.

Learned senior counsel relied on judgment of this Court in *The Revenue Divisional Officer and The Commissioner and Secretary, Education*

Department Vs. Saroja Victor and A. Vanaja, to inform that if, as in the instant case, proceedings for acquisition had been initiated after

possession was taken, it would be open to the landowner, at the time of seeking a reference u/s 18 of the land acquisition act, to request the

collector to include in the terms of reference the question relating to damages for use in occupation for the period from the date of taking

possession till date of notification u/s 4 of the land acquisition act. Explaining the reason for the petitioner moving the present writ petition in the

year 2006 as against possession of lands taken in 1972, learned senior counsel submits that just as the petitioners, the respondents also were also

under the impression that the decision in *Narendra Dairy's* case applied also to the present case. Having caused the notification u/s 18(1) of the

Tamil Nadu land reforms (fixation of ceiling on land) act 1961 on 22.7.1981, the respondent had resorted to publishing a draft assessment roll as

late as on 9.8.2006 which was the cause for concern leading to the filing of the present writ petition.

4. It is contended on behalf of the petitioners that the decisions in W.P. Nos. 119 and 120 of 1974 and connected W.A. Nos. 677 and 678 of

1979 and SLP Civil Appeal Nos. 1285 and 1286 of 1992, have direct bearing on the matter arising in the present proceedings while the

contention of the respondents is that they do not. The answer would lie on whether such decisions merely are those arrived on factual

considerations or whether they lay down propositions of law. Towards arriving at a decision, it would be useful to extract relevant portions of the

judgment of the Learned single judge in W.P. Nos. 119 and 120 of 1974:

... having regard to the purpose and object of the Land Ceiling Act, it does not require much to see that the first respondent cannot rely upon the

provisions of the Land Ceiling Act to acquire land needed for an irrigation project. This position seems to have been fully realised by Government

in the earlier stage of matters, and that is why in spite of the land ceiling Act and the amending Act having come in to force, the first respondent had

deemed it necessary to initiate proceedings under the Land Acquisition Act to acquire a certain extent of land belonging to the petitioners, albeit

that extent constituting surplus land in the hands of the first petitioner. Not only were acquisition proceedings initiated, but the proceedings almost

reached a stage of finality in that even declarations u/s 6 had been published. Further now possession of the dam site as well as a large extent of

land for water spread area had also been taken over by the respondents. I have already referred to the admissions made by the respondents in their

counter in the matter of taking possession of the land. In that state of affairs, is it open to the respondent to resile from their earlier stand and

contend that all those proceedings can be given a go-by and the Government can get at the lands of the position are required for the irrigation

project by having resort to the provisions of the Land Ceiling Act? I think not. This ratio laid down by the Supreme Court in *Vijay Cotton and Oil*

Mills Ltd. Vs. The State of Gujarat, can be appositely quoted here and usefully applied to the cases on hand. That was a case where Government

took possession of certain lands belonging to a party under arrangements to give the party substituted lands, but subsequently, it decided to acquire

the lands and issued notification u/s 6(1) of the Land Acquisition Act. Compensation was also determined, but on a dispute regarding the quantum,

a reference was made to the Civil Court. At that state of matters, the Government went back on its stand and contended that there had been no

notification u/s 4(1) of the Act and consequently, the acquisition proceedings were null and void. This action of the Government was challenged

and the question which had to be decided by the Court was whether the Government can take up inconsistent positions in Court at successive

stages in the same litigation to the detriment of its opponent. The Supreme Court held that the Government, having chosen to acquire the land and issued the notification u/s 6(1) was not entitled to resile from its stand and take up the plea that the acquisition proceedings had not been properly initiated and therefore, the land owner was not entitled to claim compensation. In the instant case also, the Government having launched the acquisition proceedings and taken possession of the land, cannot now go back on the stand and say that since the land sought to be acquired will come to be vested in it as surplus land under the Land Ceiling Act, it can conveniently drop the acquisition proceedings and in that they will utilise a portion of the surplus land for implementing the The State of Madras Vs. A.Y.S. Parisutha Nadar can also be referred to herewith advantage. In that case, the Government initiated acquisition proceedings to acquire a certain land, had vested in it u/s 3 of the Madras Estates Abolition Act and therefore, it will not pay compensation to the owner of the land. A Division Bench of this Court replied the contention of the Government and held that once the Government availed itself of the provisions of the Machinery under the land acquisition Act or compulsory acquisition, treating the land as belonging to others, the Government comes under the obligation to pay compensation as provided under the Act. Applying this principle, it has to be held that once the Government had sought to acquire the land on the footing the land can be obtained only by means of acquisition for forming the dam, then it cannot give up its position and say that it will lay its hands on the land by taking it over as surplus land under the Land Ceiling Act. There is the further impediment to the contention of the respondents. Viz., that any extent of land taken over as surplus under the provisions of the Land Ceiling Act cannot be made use of for any other purposes except for distribution of landless persons, since that is the sole purpose for which the land ceiling Act has been enacted. The learned Advocate General argued that the Land Ceiling Act contemplate distribution of surplus land to subserve the common good and therefore a land taken over as surplus can also be utilised for constructing a dam or irrigation project. I am afraid this contention cannot be accepted because the objects mentioned, the Land ceiling Act clearly indicate that land in excess of the ceiling are taken over by Government, has to be necessarily distributed to landless and other persons among the rural population and such

distribution is aimed at increasing agricultural production and promoting justice, social and economic. To hold otherwise, will amount to the Court

condoning the Government making a colourable exercise of its powers under the Land Ceiling Act. It was pointed out in *Municipal Council of*

Sydney v. Camobeli (3) 1925 AC 338 343.

A body such as the municipal council of Sydney authorised to take land compulsorily for specified purpose will not be permitted to exercise its

powers for different purposes, and if it attempts to do so, the Court will interfere.

In spite of the Land Ceiling Act and mending Act 17 of 1970 having come into force on 15.2.1970, the surplus lands did not automatically vest in

the Government because as per the terms of the land ceiling Act, the surplus land will be deemed to have been acquired for a public purpose and

vested in the Government free from all encumbrances from the date of the commencement of the Act only after the publication of the notification

under sub-section (1) of Section 18. In this case, the notification u/s 18(1) had been made only at or about the time the writ petitions were filed.

The respondent cannot, therefore, contend that even at the time, the acquisition proceedings were initiated, the surplus lands had vested with the

Government.

The second argument of the petitioner's counsel was that the proviso to Section 6(1) had been introduced to safeguard the interest of the citizen

whose land was sought to be acquired and not to facilitate the Government making facile withdrawal from acquisition proceedings resorted to by

its earlier, on a question of technicality. In otherwords, the submission of Mr. Venugopal was that the proviso had been introduced only to prevent

the Government from abusing its powers under the Land Acquisition Act and making sweeping notifications u/s 4(1) of the Land Acquisition Act in

order to freeze the price of land which Government had no immediate intention of acquiring for public purposes. As a further step in this line of

argument Mr. Venugopal argued that... the interdiction contained in the proviso had been introduced only to safeguard the interests of the citizens,

it was always open to the citizen to waive the protection afforded to him and to ask the Government to continue the acquisition proceedings not

withstanding the notification u/s 4(1) of the Land Acquisition Act having been made more than three years before the publication of the notification

u/s 6(1) of the Act. I think there is considerable force in the argument of Mr. Venugopal, the proviso to Section 6(1) on which the learned

Advocate General placed reliance has been introduced only to act as a check on the Government and not to facilitate the Government to take

cover under that provision and disown its obligation to go ahead with the acquisition proceedings, unmindful of the loss and hardship caused to the owner of the land.

In decision of the division bench in W.A. Nos. 677 and 678 of 1979, it has been held as follows:

12. We may now advert to the effect of initiation of proceedings under the Land Acquisition Act, long prior to the issue of the notification u/s 18(1)

of the Land Ceilings Act. From the dates already mentioned, it is clear that the initiation of the proceedings under the provisions of the Land

Acquisition Act was subsequent to the commencement of the Land Ceilings Act, though prior to the notification u/s 18(1) of the Land Ceilings Act.

When the notifications u/s 4(1) of the Land Acquisition Act in respect of the lands in question were issued, the Government resorted to these

provisions, treating the subject matter of the acquisition as not belonging to itself, but as belonging to the respondents herein. In *The State of*

Madras Vs. A.Y.S. Parisutha Nadar a Division Bench of this Court considered the question whether it was open to a claimant to assert title to the

lands acquired against the State Government which became vested in it by force of operation of the statute, viz., Tamil Nadu Act 26 of 1948. The

argument was that when once an Estate was taken over by the State Government under the provisions of the Tamil Nadu Estates Abolition Act,

the State became the absolute owner thereof and no claim against the Government can be put forward by any other person. That argument was

repelled on the ground that the claim of the State Government acquiring its own land and paying compensation to itself was ridiculous and that the

State Government is not competent to put forward its own title to the acquired property in a proceeding under the Land Acquisition Act as the

very scheme of the Land Acquisition Act is on the basis that the lands acquired belonged to others and not to itself. We have not been persuaded

to hold that this principle is inapplicable on the facts and circumstances of this case or that it is erroneous. Thus, even on the principle laid down in

the decision referred to earlier, it follows that the Government cannot resile now from the land acquisition proceedings already commenced.

13. The question whether tile resort had by the State to the provisions of the Land Ceilings Act with reference to the lands in question, in respect of

which proceedings had already been initiated under the Land Acquisition Act, is not a colourable exercise of power, may now be considered. We

are assuming for purposes of considering this aspect that the State has the power to acquire lands for the irrigation scheme in question under both

the enactments. It is obvious that if the proceedings under the Land Acquisition Act are pursued to their conclusion, the State will be obliged to pay

compensation to the respondents in respect of the acquired lands at the market value, which prevailed at or about the time of the notification u/s

4(1) of the Land Acquisition Act. It is also not in dispute that the compensation payable in respect of the surplus lands taken over under the

provisions of the Land Ceilings Act does not bear any comparison at all with the compensation payable under the provisions of the Land

Acquisition Act. In other words, the State has a choice of applying two enactments with reference to the lands in question - one that would oblige

it to pay a higher compensation and the other, under which, a very meagre amount alone may become payable. In such a situation, it is not open to

the State to use its powers under one of the two enactments, which will be more disadvantageous to the citizen. Even on the assumption that it is

open to the State to resort to the acquisition of the lands in question under the provisions of the Land Ceilings Act for the purposes of the irrigation

dam, the State cannot proceed to exercise its powers thereunder to the detriment of the citizen, in the matter of compensation, which would not

arise if proceedings invoking the provisions of the Land Acquisition Act already commenced were continued. We may usefully refer in this

connection to the following observations of the Supreme Court in *Jiwani Devi Paraki Vs. First Land Acquisition Collector, Calcutta and Others*,

Where one is repository of two powers that is power of requisition as well as power of acquisition qua the same property and if the purpose can

equally be served by one which causes lesser inconvenience and damage to the citizen concerned unless the repository of both the powers suffers

from any insurmountable disability, user of one which is disadvantageous to the citizen without exploring the use of the other would be bad not on

the ground that the Government has no power but on the ground that it will be a misuse of the power in law.

We are of the view that even assuming that it is open to the State to resort to the provisions of Land Ceilings Act to acquire lands for the irrigation

dam in question it would be a misuse of its power. We are unable to understand the decision of the Supreme Court in *M.R. Mudaliar v. State of*

Madras, as enabling the State to have some kind of a choice in the matter of the acquisition of lands. The argument in that case was that the

proceedings under the Land Acquisition Act having been taken already, that would not bar the application of the provisions of the Tamil Nadu

Leaseholds (Abolition and Conversion into Ryotwari) Act., 27 of 1963. It was pointed out that the provisions of the Land Acquisition Act and the

Tamil Nadu Act 27 of 1963 operated on different fields and that the grant of a ryotwari patta u/s 9 would enable the grantee to get compensation

under the Land Acquisition Act. This decision, in our view, does not in any manner justify the State in its choice of one enactment in preference to

another. It has to be remembered that even by the application of the provisions of Tamil Nadu Act 27 of 1963, the grantee of the patta would still

have in him an interest, which is capable of being acquired under the provisions of the Land Acquisition Act and it was in that context, the Supreme

Court pointed out that the two enactments operated in different fields. Such a situation does not obtain in this case. Whether it be under the

provisions of the Land Acquisition Act or the Land Ceilings Act, the result is the total extinction of the interest of the owner of the land in the lands.

There is therefore no scope for the contention that both the enactments could operate at the same time. We are therefore of the view that the

decision relied upon cannot in any manner assist the State in justifying the application of one enactment instead of the other. We therefore hold that

there is misuse of the power by the State in applying the provisions of the Land Ceilings Act to the lands in question, when proceedings had

already been initiated under the Land Acquisition Act.

14. Lastly, the learned Additional Government Pleader submitted that the extent of 411.4 acres declared as surplus may be taken over by the

State pursuant to the proceedings under the Land Ceilings Act part of its policy to bring about agrarian reforms. In this connection, learned counsel

also relied upon the observations of Krishna Iyer, J. in *State of Kerala and Another Vs. The Gwalior Rayon Silk Manufacturing (Wvg.) Co. Ltd.*

etc., to contend that the construction of irrigation systems would also be within the ambit of agrarian reforms. We may briefly refer to the scope of

the Land Acquisition Act as well as the Land Ceilings Act. The object of the Land Acquisition Act is to acquire lands needed for public purposes

and for companies and for determination of the amount of compensation in respect of such acquisition. The Land Ceilings Act had been enacted to

given effect to the directive principle of the State policy in Article 39 of the Constitution. Article 39 deals with the State directing its policy towards

securing ownership and control of material resources of the community with a view to secure equitable distribution in such a manner as to subserve

common good in order that the concentration of wealth and means of production to common detriment, in the hands of a few, did not result. The

preamble of the Land Ceilings Act further indicates that the primordial purpose is to acquire lands in excess of the ceiling area in order that such

excess may be made available for distribution amongst the landless and other persons in the rural areas in accordance with the rules framed. Thus,

the policy of the Land Ceilings Act as well as the rules shows that the surplus lands have to be allotted to the landless persons and not for other,

purposes. It may be that the provisions of the irrigation facilities are also part of agrarian reforms as stated in the judgment of the Supreme Court

relied on by the learned Additional Government Pleader. But agrarian reforms is not one of the avowed objects of the Land Ceilings Act, which is

intended only to reduce the disparity in the ownership of agricultural lands and to secure an equitable distribution of the surplus lands in a manner,

which would subserve the common good, result in agricultural production and promote justice, social and economic. Taking into account the

purpose and object of the Land Ceilings Act, the appellants cannot rely upon its provisions to acquire lands needed for an irrigation project.

Presumably, realising this, the State had thought it fit to initiate proceedings under the Land Acquisition Act, so as to) acquire the surplus lands

belonging to the respondents. Not content with merely issuing a notification u/s 4(1) of the Act, the proceedings also culminated in a declaration u/s

6 of the Land Acquisition Act, at least with reference to a major portion of the lands for the Dam site as well as the water spread area and that

had been taken possession of. Under those circumstances, it is not open to the appellants to justify the taking over of the surplus lands in question

under the guise of bringing about agrarian reforms under the Land Reforms Act. No other point was urged.

The decision of the division bench also informs that it is the factum of possession by Government and not the mode by which it is obtained that is

relevant for the purposes of Section 48 of the land acquisition act. Once having taken possession, it will not be open to the government to

withdraw therefrom u/s 48(1) of the Land Acquisition Act. The connected appeals before the Supreme Court in C.A. Nos. 1285 and 1286 of

1992 have been dismissed as infructuous recording the fact that compensation arrived at by the Land Acquisition Collector had been received

under protest and a reference been made u/s 18 of the land acquisition act. The Supreme Court did not find it necessary to express any opinion on

the question of law involved in the appeals.

5. Useful reference may be had to the order of this Court in W.A. No. 576 of 1979 dated 6.11.1985, wherein the learned single Judge who had

disposed of WP numbers 119 and 120 of 1974, penning the judgment of the division bench had further explained the position as follows:

7....The Act has been passed for fulfilling the objectives contained in Clauses (b) and (c) of Article 39 of the Constitution of India. The objective is

for the State to take steps to see that the ownership and control of the material resources of the community are so distributed as best to subserve

the common good and that the operation of the economic system does not result in the concentration of wealth and means of production to the

common detriment. As an integral part of the scheme, the State has been enjoined to remove the disparity in the ownership of agricultural land

leading to the concentration of such land in the hands of certain persons and to enquire surplus land concentrated in the lands of some persons and

distributed it to the landless and other deserving persons among the rural population. In conformity with the object of the Act, the word "land" has

been defined in Section 3(22) as meaning agricultural land, i.e., land which is used or capable of being used for agricultural purposes of purposes

sub servant thereto. The definition has been made to include forest land, pasture land, plantation and tope, but house-site or land used exclusively

for non-agricultural purposes has been specifically excluded. Section 5 prescribes the Ceiling area for different kinds of owners. Section 7 is the

operative Section which lays down that on and from the date of the commencement of the Act, no person will be entitled to hold land in excess of

the ceiling area. Section 8 relates to the furnishing of returns by persons holding land in excess of the ceiling area and Section 9 deals with the

collection of information. Then comes Section 10 which deals with the preparation and publication of draft statement as regards land in excess of

the ceiling area. Section 11 empowers the Authorised Officer to decide the question of title in certain cases. Then comes Section 12 under which a

publication of a final statement is to be made. The next relevant Section to be mentioned is Section 13 which provides for the Government taking

over the surplus land in terms of the publication of final statement u/s 12 or 14. Section 10-A provides for the inclusion of any land which had

inadvertently escaped the notice of the authorities from being included in the extent of holdings owned by the landowner. Section 13-B confers

power on government to modify the notification u/s 10(1) consequent on corrections being made u/s 15. Section 13-C confers power on the

Government to cancel or modify notifications u/s 13(1) in certain cases. Sections 13-D and 13-E are consequential provisions which relate to

divesting and vesting of land excluded or newly included, as the case may be.

8. Averting now to Section 7, which is the operative Section, it forbids any person governed by the Act to hold land in excess of the ceiling area

from the date of the commencement of the Act. Therefore, it follows that a person is entitled to hold the permitted extent of land which falls within

the ceiling area, and such extent of land should satisfy the definition of "land" u/s 3(22) of the Act, i.e., land which is actually put to agricultural use

or capable of being put to agricultural use. In the same manner, it must be held that what can be taken over by Government as surplus can only be

land falling within the definition of Section 3(22).

6. From the above decisions, the following legal propositions emerge:

(i) Resort can be had to the provisions of the Land Ceiling Act only where the purposes of such act can be served. Unless the lands found in

excess can be placed in the hands of landless persons towards their carrying out agricultural operations thereupon, the provisions of the land ceiling

act cannot be resorted to.

(ii) Even where resort has been had to the provisions of the land ceiling act, the surplus land would be deemed to have been acquired for a public

purpose and would vest in Government free from all encumbrances from the date of commencement of the act only after the publication of the

notification under sub-section 1 of Section 18.

(iii) Where two enactments would apply in respect of a matter, that which is more favourable to the affected party is to be resorted to. Acting

otherwise, would be a colorable exercise of power.

(iv) Irrespective of the manner in which possession has been taken, once the same has been done, government cannot drop the acquisition

proceedings by resort to 48(1) of the Land Acquisition Act.

(v) Having embarked upon acquisition u/s 4(1) of the land acquisition act, the government cannot take advantage of its own wrong of not making

the declaration u/s 6 within two years thereof, since proviso to Section 6(1) of the land acquisition act "has been introduced only to act as a check

on the government and not to facilitate the government to take cover under that provision and disown its obligation to go ahead with the acquisition

proceedings unmindful of the loss and hardship caused to the owner of the land.

7. Keeping the above principles in mind, we find that in the instant case it would have to be held that having resorted to acquisition under the Land

Acquisition Act, compensation whereunder is far greater than that which would accrue under the Land Ceiling Act, it would not be open to the

respondents to abandon the proceedings under the Land Acquisition Act and take recourse to the Land Ceiling Act. That the lands in question

have been rendered incapable for agricultural use owing to the construction of the Palar Porundalar Dam would be an additional reason why the

writ petition succeeds.

8. On perusal of the order of this Court in W.P. No. 2842 of 1992 dated 24.11.1999, we find that it has been contended by the respondent State

that as notification stood issued by the Authorised Officer (Land Reforms) Dindigul, the proceedings under the Land Acquisition Act stood

withdrawn. Thereupon, Learned single Judge had expressed the view that in the circumstance the relief prayed for viz., a direction for deposit of

compensation of Rs. 1,50,000/- in proper securities and payment of accrued periodical interest to the third respondent (i.e.) Official Assignee High

Court, Madras to the credit of the petitioner in L.P. No. 72 of 1986 on the file of this Court (Insolvency jurisdiction), was no more available at that

stage. We have no doubt that if the earlier decisions of this Court, two of which are those of Division Benches and are binding upon a single Judge,

had been brought to the notice, the view expressed in the order in W.P. No. 2842 of 1992, dated 24.11.1999, would not have come about.

Accordingly writ petition shall stand allowed as prayed for. As informed in decision of this Court in Revenue Divisional Officer v. Saroja Victor

(supra), it would be open to the petitioner, at the time of seeking reference under Sectional 8 of the Land Acquisition Act, to request the Collector

to include in the terms of reference the question relating to damages for the period from the date of taking possession till date of notification u/s 4 of

such Act.