
(2011) 04 MAD CK 0411

In the Madras High Court

Case No : Writ Appeals No.781, 782, 799, 800, 855, 856 and 859 to 863 of 2008; M.P.No.1 of 2008 in W.A.No.781 of 2008; M.P.No.1 of 2008 in W.A.No.782 of 2008; M.P.No.1 of 2008 in W.A.No.799 of 2008; M. P. No. 1 of 2008 in W.A.No.800 of 2008; M.P.No.1 of 2008 in W:A

Mr.J.Doraibabu and Mr. Sridhar

APPELLANT

Vs

State of Tamil Nadu and M/s. SIPCOT

RESPONDENT

Date of Decision : 29-04-2011

Acts Referred:

Companies Act, 1956 — Section 51

Constitution of India, 1950 — Article 226, 300A

Land Acquisition Act, 1894 — Section 17

Tamil Nadu Acquisition of Land for Industrial Purpose Act, 1997 — Section 14, 2, 21, 23A, 25(2)

Citation : (2011) WritLR 505

Hon'ble Judges : M.Venugopal, J;Elipe Dharma Rao, J

Bench : Division Bench

Advocate : R. Subramanian for W. As. 781 and 782/2008, Mr. S. Subbiah for W.A. Nos. 799 and 800/2008, Mr. P. Madhavan and Mr. R. Karunakaran for W. As. 855 and 856/2008, Mr.s. D.S. Philip for W. As. 859 to 863/2008, for the Appellant; P.S. Raman Advocate General Assisted by Mr. M. Devarajan for SIPCOT and Mr. V. Viswanathan, Spl. G.P., for the Respondent

Final Decision : Dismissed

Judgement

Elipe Dharma Rao, J.—Since the issue involved in all these matters is one and the same and they all having been filed challenging the very same common order passed by a learned single Judge of this Court, these matters are heard together and are being disposed of by this common judgment.

2. In G.O.Ms.No.125, Industries (MIDI) Department, dated 9.5.1997, administrative sanction was accorded by the Government of Tamil Nadu for acquisition of lands over an extent of 636.88.0 hectares by invoking the urgency clause 17(1) of the Land Acquisition Act, 1894 and transfer of an extent of 190.34.0 hectares poramboke lands in favour of Tamil Nadu Corporation for

Industrial Infrastructure Development Limited (TACID), which has been subsequently merged with State Industries Promotion Corporation of Tamil Nadu Limited (SIPCOT), for setting up of an Industrial Complex at Oragadam and in eight other villages in Sriperumbudur Taluk, Kancheepuram District. The Government, having felt that there is steady increase in the demand for industrial lands in close proximity to Chennai, has decided to take up expansion of the existing Oragadam Industrial Complex and identified 395.87.5 hectares of patta and poramboke lands in Oragadam and Sennakuppam villages in Sriperumbudur Taluk, Kancheepuram District and accorded administrative sanction for acquisition of 91.07.0 hectares of wet land, 269.90.5 hectares of dry land and alienation of 34.90.0 hectares of poramboke lands in Oragadam and Sennakuppam villages, Sriperumbudur Taluk, Kancheepuram District by G.O.Ms.No.139, Industries (MIG-2) Department, dated 3.11.2006. Pursuant thereto, according to the respondents/authorities, notices were sent to the land owners, whose names were found in the revenue records and enquiry on the objections received from the land owners was conducted by the District Collector, Kanchipuram on 20.3.2007 and 26.3.2007 and under a series of Government Orders, all dated 4.7.2007, the Government approved the publication of notices u/s 3(1) of the Tamil Nadu Acquisition of Land for Industrial Purposes Act, 1997 (hereinafter referred to as the Industrial Purposes Act).

3. Challenging this action of the Government to acquire the lands, several land owners have filed writ petitions before this Court. The learned single Judge of this Court has dismissed all the writ petitions, by the common order dated 3.6.2008 by observing that "there has been substantive compliance of service of notice, conduct of hearing and also taking into consideration the larger industrial development of the State and on the basis of the Object of the Industrial Purposes Act, apart from the fact that out of 6,500 land owners, except 16 writ petitioners (since the writ petitioner in W.P.No.29575 of 2007 (by name N.Rajendran) has accepted the compensation and the said writ petition is dismissed as infructuous) all other persons have either accepted the compensation or surrendered the lands by accepting the acquisition proceedings...". The learned Judge has also observed that "however, in respect of cases where specific plea is raised about the occupation of specified portions for religious purposes or small scale industry purpose, it is always open to the said petitioners to make proper representation to the Government either for the purpose of withdrawal of the lands from acquisition proceedings or for any other relief. In that case, it is always open to the Government to consider the same in accordance with law and on merits. It is also made clear that in cases where the petitioners are already carrying on some industrial activities, which may be referred to as "industrial purpose" under the Tamil Nadu Act 10/1999, it is always open to the said petitioners to make proper representation to SEPCOT after the acquisition proceedings are over, for the purpose of allotment. In such event, it is for the SEPCOT as well as the Government to consider their case in accordance with law and on merits and pass appropriate orders."

4. Aggrieved against the above said findings of the learned single Judge, eleven of the writ petitioners have preferred these writ appeals.

5. For better assessment of the entire gamut, we feel it appropriate to narrate the facts of each case.

W.A.Nos.781 and 782 of 2008:

6. Both these appellants are brothers and according to them, there was a family partition among the legal heirs of their father Mr.Jayaraman, who died on 28.6.1996 and a family partition was effected under a registered partition deed dated 4.12.2003, where-under the appellant in W.A.No.781 of 2008 (by name J.Duraibabu) became the owner of 75 cents and the appellant in W.A.No.782 of 2008 (by name J.Sridhar) became the owner of 25 cents out of one acre of land in S.No. 49/3 of Oragadam village but patta remained in the name of their father and though the appellants are paying the property tax, no notice was issued to them by the authorities, as required under the provisions of the Industrial Purposes Act. It is also their case that though they are paying the property tax, water tax, electricity charges and they were also issued with the family cards, thus showing mutation in other revenue records and were also granted proper approval by the concerned authority for the construction of the shopping complex, no notices were issued to them and therefore, the entire acquisition proceedings initiated in respect of their lands are null and void.

7. The contentions of these appellants were countered by the third respondent stating that no notice has to be issued to the appellants in view of the fact that the property stands in the name of Mr.Jayaraman and as no mutation of land records was done, the statutory authorities cannot be found fault with for non-issuance of notice to the present owners.

W.A.No. 799/2008:

8. The case of this appellant is that he is the owner of an extent of 8163 sq.ft. of land in S.No.49/1A3 and 1A5 of Oragadam village, having been purchased by him as per the sale deed dated 18.5.2006, for setting up an industry. After purchase, he has also obtained necessary licenses from the General Manager, District Industries, Kanchipuram. Even though his property was also a subject matter of the acquisition, no notice was issued to him at any point of time.

9. The third respondent in this appeal has filed a counter affidavit stating that the property stood in the name of Mr.Jayaraman and hence notice was issued in the name of the said Jayaraman and subsequently, records were verified in the Sub Registrar's Office and accordingly, the name of the appellant was included in the notification issued u/s 3(1) of the Industrial Purposes Act.

W.A.No.800/2008:

10. According to this appellant, he along with his wife purchased the immovable property in S.No.49/IB of Oragadam village, measuring about 2100 sq.ft., as per

the sale deed dated 31.1.2005, but no notice was issued to him by the Government with respect to the acquisition in question, however, his wife received a notice dated 20.4.2007 from the fourth respondent calling upon her to inform as to whether she was willing to surrender the property to the Government for the proposed project of SIPCOT and the appellant, as per his reply dated 12.5.2007 informed the fourth respondent that he has no intention of giving the property and he has objection for acquiring the property, but, however, there was no follow up action with notice to him. It is also his contention that no notice was issued to him at any point of time and the first notification was issued without any kind of enquiry and as such, it was against the principles of natural justice. 11. The third respondent contended that the property stood only in the name of Mr.Jayaraman and hence notice was issued only in his name, but since there was no reply, further proceedings were continued, *exparte*.

W.A.Nos.855 and 856/2008:

12. According to the appellant in W.A.No.855 of 2008, who is the Managing Director of the first appellant company in W.A.No.856/2008, he has purchased an extent of 5.04 acres of land in S.No.70/3, 70/7, 70/8, 70/9, 70/10, 70/13B, 70/13C, 70/14, "70/17 and 17/18 under a sale deed dated 11.4.2006 and another extent of 7 acres as per the sale deed dated 22.5.2007. The properties are situated at Oragadam and Vadakkupattu villages in Sriperambadur Taluk in Kancheepuram District. A communication dated 24.4.2007 was sent to him, calling upon him as to whether he is willing for the rate of compensation fixed by the authorities for acquiring his property. By way of the said notice, the third respondent has offered a sum of Rs.14 lakhs per acre. This appellant has submitted a reply on 27.4.2007, wherein it was indicated that the property itself was purchased for the purpose of setting up an industry and as such, there was no question of acquiring the said land, but, nothing was heard thereafter. He ultimately came to know that an order u/s 3(1) of the Industrial Purposes Act was passed on 23.5.2007, which made him to initiate the present writ proceedings.

13. The third respondent has filed a counter in the writ petition wherein they have challenged the very maintainability of the writ petition. According to the third respondent, notice in Form-A was issued u/s 3(2) of the Industrial Purposes Act on 27.1.2007, however, there was no reply to the said notice and therefore, the statutory authorities proceeded with the process of acquisition and ultimately a notification u/s 3(1) was issued.

14. While W.A.No.855 of 2008 has been filed by the Managing Director of Triway Container Freight Station Private Limited in his individual capacity, W.A.No.856 of 2008 has been filed by the said company, along with others.

15. In W.A.No.856/2008, the case of the appellants is that even though they are purchasers of the properties from the second appellant, no notice was issued to

them and the property was acquired from them. This has been stiffly opposed by the third respondent, by filing a counter affidavit stating that the second appellant has sold the properties after receipt of the notice and thus the appellants are the subsequent purchasers of the properties. It has also been contended on the part of the respondents in this case that in the earlier proceedings in W.P.No. 3111/2007, the original owner/the second appellant has accepted the compensation and has in fact, withdrawn the writ petition and hence, the present writ petition is barred by res judicata.

W.As.859 to 863 of 2008:

16. The appellants in all these appeals are the purchasers from the heirs of Jayaraman (father Of the appellants in W.A.Nos.781 and 782/2008). The common ground of attack to the land acquisition proceedings is similar to that of the appellants in W.A.Nos.781 and 782/2008 that no individual notices were issued to them at any point of time. It is the case of the appellant in W.A.No.859 of 2008 that after purchase of the property, they have constructed a Church with pastor's residence in the ground floor and prayer hall in the first floor in the property in the year 2006 and regularly conducting prayers and other religious activities therein.

17. The case of the appellant in W.A.No.863 of 2008 is that she has purchased an extent of 53 cents of land in S.No.49/IB/IB of Oragadam village as per the sale deed dated 6.6.2006 and subsequently a patta was also issued in her name as per the proceedings dated 18.9.2006. Thereafter, she had put up a construction with eleven shops. She has put up a small scale industrial unit in a separate asbestos sheet covered shed measuring 500 square feet and according to her, more than 30 employees are employed in the said company, doing embroidery work and is registered as Tiny Industry with the Industries and Commerce Department with Registration No.3303102158 on 20.11.2006 and about 100 persons, either directly or indirectly, are employed in the said premises, which is a shopping complex. Thus, though she has been in possession and enjoyment of the property, no notice of acquisition was issued to her and as such, she was kept in darkness about the acquisition proceedings.

18. In all these matters, the common argument advanced on the part of the respondents is that since the property stood in the name of Mr.Jayaraman, notice was issued to him.

19. The above factual aspects, would make it clear that while W.A.Nos.855 and 856 of 2008 form one set of cases, not only with regard to the original ownership but also with regard to the factum of purchase of the property by the present appellants after initiation of the acquisition proceedings, all other matters in W.A.Nos. 781, 782, 799, 800 and 859 to 863 of 2008 stand on similar footing, in the sense, the original owner is one and the same i.e. Jayaraman, in whose name alone notices are said to have been sent by the respondents and not in the name of the present owners, the appellants in all these matters.

20. Therefore, for the sake of convenience and discussion, we shall now proceed to discuss the matters as two sets, in the manner explained above.

Discussion for W.A.No. 85 5/2008:

21. According to the appellant in this case, he has purchased 5.04 acres of land as per the sale deed dated 11.4.2006 and a further extent of 7 acres as per the sale deed dated 22.5.2007. From the materials placed on record, it is seen that this appellant was issued with a notice in Form "A" u/s 3(2) of the Industrial Purposes Act on 22.1.2007, granting him thirty days time to submit his objections. Though this appellant has submitted in his affidavit, filed in support of the writ petition, that he has submitted his objection on 15.2.2007, there are no documents produced by him to prove this aspect and in fact, even in the representation submitted by him on 27.4.2007, there was no reference about the alleged objection given by him on 15.2.2007. When, thus, the appellant has failed to submit his objections within the prescribed thirty days time permitted by law, it is not open to him to turn around and challenge the proceedings initiated by the respondents. It is also seen that an enquiry was conducted on 20.3.2007 and 26.3.2007 by the authorities, but this appellant is said to have submitted his representation well thereafter, on 27.4.2007. Only in this factual backdrop, the learned single Judge has rejected the claim of this appellant, wherein we are unable to find any illegality so to cause our interference, since being a well considered conclusion arrived at by the learned single Judge. Even though this appellant tried to insist on us that the lands are wet lands and thus are exempted category, in view of the above discussion, we do not find any reason to interfere with the decision arrived at by the learned single Judge. Therefore, this writ appeal No.855 of 2008 must fail.

Discussion for W.A.No.856/2008:

22. With regard to this writ appeal, the first appellant M/s.Triway Container Freight Station, has purchased the property from the original owner, the second appellant Mr.Venkatapathy Naidu, by way of a sale deed dated 7.5.2007. It is to be pointed out that the notice u/s 3(2) of the Industrial Purposes Act was issued in these cases on 20.2.2007. Therefore, it goes without saying that the first appellant herein has purchased the property after initiation of the land acquisition proceedings.

23. It is also seen from the materials placed on record that the second appellant in this case viz. Venkatapathy Naidu, being the original owner, has earlier filed a Writ petition in W.P.No.3111 of 2007, challenging the very same acquisition proceedings, which was dismissed as withdrawn as he has accepted the compensation and thereafter, the present writ proceedings in W.P.No.33294 of 2007 were initiated, after selling the property to the first appellant. It is also seen that while in the present writ proceedings seven survey numbers have been given viz. 69/2B, 69/3, 69/4, 69/6, 71/8A1, 70/1 and 153/7A, in the earlier writ petition in W.P.No.3111 of 2007, the original owner has included five survey

numbers, except S.Nos.153 and 70/1. As the original owner himself has accepted for the compensation and withdrawn the earlier writ proceedings in W.P.No.31 11 of 2007, he is restrained under the principles of res judicata to once again file the present writ proceedings for the very same survey numbers in 69/2B, 69/3, 69/4, 69/6 and 71/8A1. Even with respect to the other two survey numbers, which are included in the present writ proceedings in S.Nos.153 and 70/1, Section 3(2) notices have been issued to the second appellant/Mr. Venkatapathy Naidu being the original owner on 20.2.2007 and well thereafter, he has sold the property to the first appellant company on 7.5.2007. Therefore, no remedy can be made available to these appellants as they have not approached the Court with clean hands. This aspect has been dealt with in a proper manner by the learned single Judge, and therefore, the same does not call for our interference. Even though this appellant tried to insist on us that the lands are wet lands and thus are exempted category, in view of the above discussion, we do not find any reason to interfere with the well considered decision arrived at by the learned single Judge. Hence, this appeal is liable only to be dismissed.

Discussion for W.A.Nos.781, 782, 799, 800 and 859 to 863 of 2008:

24. The learned counsel appearing for the appellants in W.A.Nos.781 and 782 of 2008 would argue that when the first notification, to acquire the lands, was issued under the Industrial Purposes Act (which is the subject matter in these appeals), another notification was also issued for the same properties under the notification dated 17.12.2009, published in the Tamil Newspapers "Thina Thanthi" on 6.1.2010, by the Kanchipuram District Collector, on behalf of the Highways Department. Therefore, it has been argued on behalf of these appellants that the earlier notification issued under the Industrial Purposes Act has, thus, been superseded by the subsequent notification and hence, the earlier notification should be deemed to have been gone. In support of his contentions, the learned counsel for the appellants would rely on a judgment of the Honourable Apex Court in Raghunath and Others Vs. State of Maharashtra and Others, , wherein, at Para No.9, it has been held as follows:

9. Before concluding we must refer to one circumstance which was brought to our notice by learned counsel for the petitioners and which has also been noticed in the judgment of the High Court. It appears that, between the date of withdrawal of the earlier writ petition (namely, August 23, 1983) and the issue of the second declaration u/s 6 (namely, April 4, 1985), the government had issued a fresh notification u/s 4 for the acquisition of certain lands. The lands in the two notifications u/s 4 do not completely overlap but it appears that some fields are common in both. No declaration u/s 6 appears to have been issued in furtherance of the second notification u/s 4 when the High Court heard the matter. Learned counsel for the petitioner points out that, at least in respect of such of the lands comprised in the Section 4 notification dated June 22, 1982 as are also covered by the subsequent notification u/s 4, it is legitimate to infer that the State Government has superseded the earlier notification by the later one.

This contention is clearly well founded. We would, therefore, like to make it clear that in respect of the lands covered by the first notification u/s 4 which are also covered by, or comprised in, the second notification u/s 4, further proceedings regarding acquisition should be taken, in accordance with law, only in pursuance of the later notification and the proceedings initiated in respect of such lands by the first notification dated June 22, 1982 should be deemed to have been superseded.

25. The learned counsel appearing on behalf of the appellants in W.A.Nos.781, 782, 799, 800 and 859 to 863 of 2008 appellants would argue that no notice was served on them and even if the notice has been sent in the name of their father Jayaraman, it would have been returned with the endorsement "addressee dead", but the authorities have not filed the returned notice.

26. It has also been argued on their behalf that notice against a dead person vitiates the entire acquisition proceedings and would rely on a judgment of the Honourable Apex Court in I.I.S.Employees House Building Cooperative Society Limited vs. State of Karnataka (2005) 12 SCC 483, wherein under similar circumstances of notice having been issued to father who had died and not to his son whose name had already been entered in the revenue record, the Honourable Apex Court has held that "notice of acquisition should have been issued to son and in the absence thereof, son had been deprived of his valuable right to file objections u/s 5-A of the Land Acquisition Act and hence the notification issued u/s 4 and declaration u/s 6 are quashed.

27. The learned counsel would also rely on a judgment of the Division Bench of this Court in Savithriammal Vs. The State of Tamil Nadu, wherein also a Division Bench of this Court has held that notification in the name of a dead person is nonest. This judgment of the Division Bench of this Court has been followed by a learned single Judge of this Court in Smt. Leelavathi Vs. The State of Tamil Nadu, , whereupon also much reliance has been placed by the learned counsel for the appellants.

28. It has also been argued on behalf of the appellants that in case of development of industrial area, that area must have been declared by the Government, by notification, to be an "industrial area" as defined in Section 2(c) of the Industrial Purposes Act, but in the cases on hand, no such notification, declaring the area as "industrial area" has been issued. It is also their argument that speedy disposal cannot dispense with the enquiry when the Industrial Purposes Act and Rules specifically provide for meaningful hearing and enquiry in contra distinction to Section 17 of the Land Acquisition Act, 1894, where the Government is empowered to dispense with enquiry.

29. It is also the argument of the learned counsel appearing for the appellants in these matters is that the Collector, as the designated authority of the Government, has to personally sign every form "A"; issued under Rule 3 and since it is not the case in all these matters, the entire proceedings shall be held

to be illegal.

30. The learned Advocate General appearing on behalf of the respondents/ authorities would argue that the Industrial Purposes Act is a special statute enacted by the State in order to speedily acquire the lands for industrial purposes and as the notification issued u/s 3(2) and 3(1) specifically state that the purpose of acquisition is for expansion of the Oragadam Industrial Park and hence, no specific notification declaring the areas as an "industrial area" before commencement of the acquisition proceeding is warranted. With regard to the argument of the appellants that the Form "A" notice has not been signed by the Collector, the learned Advocate General would argue that in industrial acquisition of this size, hundreds of acres of lands may fall for acquisition and may involve thousands of land owners and hence it would not be practically possible for the collector to sign every individual form "A" notice; that as a matter of fact, the Form "B" public notice contemplated under Rule 4 has been signed by the Collector only and has been published in seven prominent locations including "torn torn" as contemplated by the Rules; that u/s 25(2)(b) of the Industrial Purposes Act, the Government may make Rules for manner of authentication of orders and other instruments of the Collector, but no rules have been framed regarding this matter as yet and therefore, there is no merit in the contention that the Collector should personally sign every Form "A" and it may be noted that the "office copy" of the Form "A" maintained by the acquiring authority has been signed by the Collector.

31. The learned Advocate General would further argue that service of notice on the person shown as owner or occupier in the record of rights is sufficient and in all these matters, notices were sent to the person whose names are depicted in the revenue records as owner i.e. Mr. Jayaraman. He would further argue that the notice sent to Mr. Jayaraman has been returned with endorsement "left" and hence, it should be construed that the notice has been sent as per Section 14 of the Industrial Purposes Act. The learned Advocate General would further argue that the relief under Article 226 being discretionary, the Court should always keep in mind the larger interest of the society, as against the individual right. He would further argue that since no prejudice is caused to the appellants, their cases should be thrown away, considering the larger interest of the public in establishment of such an industrial area in the locality.

32. The learned Advocate General would rely on the following judgments:

1. W.B. Housing Board and Others Vs. Brijendra Prasad Gupta and Others, ;
2. Ahuja Industries Ltd. Vs. State of Karnataka and Others, ;
3. Sharp Tools and etc. Vs. State of Tamil Nadu and Another etc., ;
4. Ramniklal N. Bhutta and another Vs. State of Maharashtra and others, ;
5. Girias Investment Pvt. Ltd. and Another Vs. State of Karnataka and Others, .

33. In the first judgment, the Honourable Apex Court has held that service of notice stood completed when notice served on the person recorded as owner in Record of Rights. It is not part of the duty of the Collector to make roving enquiry into ownership of persons,

34. In the second judgment cited above, the Honourable Apex Court has held that "service of notice on the person shown as owner or occupier in the record of rights is sufficient.

35. In the third judgment cited above, a Full Bench of this Court has held that "further enquiry contemplated u/s 5-A(2) of the Land Acquisition Act is a discretion given to the Collector, unlike "hearing" which is mandatory.

36. In the fourth judgment cited above, the Honourable Apex Court has held that "the power under Article 226 is discretionary and it will be exercised only in furtherance of interest of justice and not merely on the making out of a legal point.

37. In the fifth judgment cited above, the Honourable Apex Court has held that "though the rights of the individual whose property is sought to be acquired must be scrupulously respected, an acquisition for the benefit of the public at large is not to be lightly quashed and extraordinary reasons must exit or doing so.

38. In this factual matrix, to assess the legal submissions advanced on either side, we shall now look into various provisions of the Industrial Purposes Act, 1997.

39. Section 2(c) defines the term "Industrial area" as "any area declared by the Government, by notification, to be an industrial area". Section 2(d) defines "industrial estate" as "any site selected by Government, where the Government builds factories and other buildings and makes them available for any industry". Section 2(e) defines "industrial purpose" as "includes the starting of a new industry, expansion of an existing industry, the development of an industrial area and establishment and management of an industrial estate.

40. Section 3 of the Act deals with "power to acquire land". Under this Section, the Government has got the power to acquire land or industrial purposes. Section 3 reads as under:

3. Power to acquire land -

(1) If, at any time, in the opinion of the Government, any land is required for any industrial purposes, or for any other purpose in furtherance of the objects of this Act, they may acquire such land by publishing in the Tamil Nadu Government Gazette a notice specifying the particular purpose for which such land is required.

(2) Before publishing a notice under sub-section (1), the Government shall, call upon the owner and any other person, who in the opinion of the Government may be interested in such land, to show cause within such time as may be specified in the notice, why the land should not be acquired. The Government

shall also cause a public notice to be given in such manner as may be prescribed.

(3) The Government may pass an order under sub-section (1) after hearing and considering the cause, if any, shown by the owner or person interested.

41. Section 4 contemplates that "land acquired to vest in Government free from all encumbrances". It reads as follows:

4. Land acquired to vest in Government free from all encumbrances -

(1) When a notice under sub-section (1) of section 3 is published in the Tamil Nadu Government Gazette, the land to which the said notice relates shall, on and from the date of such publication, vest absolutely in the Government free from all encumbrances:

Provided that if before actual possession of such land is taken by, or on behalf of, the Government, it appears for the Government, that the land is no more required for the purpose of this Act, the Government may, by notice published in the Tamil Nadu Government Gazette, withdraw the land from acquisition. On the publication of such notice, the land shall revest with retrospective effect in the person from whom it was divested on the issue of order under sub-section (1) of section 3, subject to such encumbrances, if any, as may be subsisting at that time:

Provided further that the owner and other persons interested shall be entitled to payment of an amount as determined in accordance with the provisions of section 7 for the damage, if any, suffered by them in consequence of the acquisition proceedings.

(2) Where any land is vested in the Government under sub-section (1), the Government may, by order, direct any person who may be in possession of the land to surrender or deliver possession thereof to the Collector or any person duly authorised by him in this behalf within thirty days of the service of the order.

(3) If any person refuses or fails to comply with an order made under sub-section (2), the Collector may take possession of the land, and may, for that purpose, use such force as may be necessary.

42. Section 14 of the Act deals with "service of notices, etc." and it reads as follows:

14. Service of notices, etc. -

(1) All notices, orders and other documents required by this Act or any rule made thereunder to be served upon any person shall, save as otherwise provided in this Act or such rule, be deemed to be duly served, -

(a) where the person to be served is a company, the service is effected in accordance with the provisions of section 51 of the Companies Act, 1956 (Central Act 1 of 1956);

(b) where the person to be served is a firm, if the document is addressed to the firm at its principal place of business, identifying it by the name or style under which its business is carried on, and is either -

(i) sent under a certificate of posting or by registered post, or

(ii) left at the said place of business;

(c) where the person to be served is a statutory public body or a corporation or a society or other body, if the document is addressed to the Secretary, Treasurer or other head officer of that body, corporation or society at its principal office and is either -

(i) sent under a certificate of posting or by registered post; or

(ii) left at that office;

(d) in any other case, if the document is addressed to the person to be served and -

(i) is given or tendered to him; or

(ii) if such person cannot be found, is affixed on some conspicuous part of his last known place of residence or business or is given or tendered to some adult member of his family or is affixed on some conspicuous part of the land or building to which it relates; or

(iii) is sent under a certificate of posting, or by registered post to that person.

(2) Any document which is required or authorised to be served on the owner or occupier of any land or building may be addressed "the owner" or "the occupier", as the case may be, of that land or building (naming that land or building) without further name or description, and shall be deemed to be duly served -

(a) if the document so addressed is sent or delivered in accordance with clause (d) of sub-section (1); or

(b) if the document so addressed or a copy thereof so addressed, is given or tendered to some person on the land or building or, where there is no person on the land or building to whom it can be delivered, is affixed to some conspicuous part of the land or building.

(3) where a document is served on the firm in accordance with this section, the document shall be deemed to be served on each partner.

(4) For the purpose of enabling any document to be served on the owner of any property, the occupier (if any) of the property may be required by notice in writing by the Government, to state the name and address of the owner thereof.

43. A harmonious reading of the entire provisions of the Act would make it clear that this Act While aiming to immediately acquire the lands for industrial purposes, has never dispensed with the well acclaimed principle of audi alteram

partem. Though u/s 4(1) It has been ordered that the lands shall vest Absolutely in the Government, free from all encumbrances, after publication of the notice u/s 3(1) of the Act in the Gazette, the Legislature has mandated, in the form of Section 3(2), a show-cause notice to be issued to the owner and any other person, who in the opinion of the Government, may be interested in such land. Section 14 has narrated the manner in which the service of notices etc., as has been extracted supra.

44. The learned Advocate General has argued that since the revenue records bore only the name of Mr. Jayaraman, a notice was issued to him and the same was returned as "left". As has been discussed by us in the opening paragraphs of this judgment, the said Jayaraman, died long back, to be specific, on 28.6.1996 and the present acquisition proceedings have been initiated in the year 2007 i.e. after a long period of eleven years. Many developments have taken place in the meanwhile, including mutation of revenue records, since pursuant to the partition in the family, the legal heirs of the said Jayaraman have sold properties to various parties, including the appellants herein, some of whom have also obtained pattas in their names, besides paying the necessary taxes to the Government in their names. While such being the factual position, the argument advanced on the part of the learned Advocate General that the notices issued in the name of Mr. Jayaraman, returned as "left", looks funny, since, in such cases, the notices could be returned only with the endorsement "addressee died".

45. It has been submitted on the part of the Government that since the chitta book has not been updated as per the patta issued, the notice was issued to Mr. Jayaram in whose name an extent of 10,050 square metres of land in S.No. 190/5 is entered. This lethargic attitude in not properly maintaining the chitta book, cannot be attributed to the appellants, so as to say that they are not entitled for any notice nor to justify the action of the respondents/authorities in issuing the notices to the erstwhile owner, who is dead a decade back. Further more, applying the ratio laid down by the Honourable Apex Court in *I.I.S. Employees House Building Cooperative Society Limited vs. State of Karnataka* (2005) 12 SCC 483 and that of a Division Bench of this Court in *Savithiriammal Vs. The State of Tamil Nadu*, we have no hesitation to hold that the notice issued in the name of a dead person is non-est in law.

46. It is also to be pointed out that when the appellants are already in possession of the properties, pursuant to their purchase of the properties, by paying necessary taxes to various authorities, which cannot take place until and unless the revenue records are changed in their name, non-issuance of any individual notices to them by the authorities, would vitiate the acquisition proceedings. Section 3(2) of the Act not only makes a mention of the owner, but also "any other person, who in the opinion of the Government may be interested in such land", to show cause as to why the land should not be acquired. Likewise, Section 14 of the Act recognises the right of even the "occupier" and tabulates the manner in which the service of notices etc. to be effected not only

with regard to the companies, firms, but also with regard to the individuals etc. While that being the legal protection afforded not only to the "owner" but also "the person interested" in the land, the issuance of notice in the name of erstwhile owner, who is dead a decade back, and non-issuance of notice to the present owners, at least considering them as "persons interested" (since being the present occupants) are neither excusable nor curable mistakes committed on the part of the respondents/Authorities, since the authorities have given a simple go-by to the entire procedure of service of notice contemplated under the Act.

47. Pursuant to our directions, the respondents/authorities have produced entire file relating to acquisition. It is seen from these records that the District Collector, Kanchipuram after conducting the statutory enquiry, submitted a report to the Commissioner of Land Administration, Chennai on 12.4.2007. According to the said report, an enquiry was conducted on 20.3.2007 and 26.3.2007 and the venue was a marriage hall, wherein both the objectors as well as those land owners who were agreeable to receive the compensation offered by the authorities were present. The objections were not considered individually and all the objections were rejected by the District Collector, lock, stock and barrel. The undue haste and hurry exhibited by the District Collector in submitting his report to the Government is the reason for this wholesale disposal of objections by him, with no appreciation of the individual cases. We are prompted to comment so in view of the fact that the enquiry has been conducted on 20.3.2007 and on 26.3.2007 and SIPCOT has offered its views on 9.4.2007 and within three days thereafter, i.e. on 12.4.2007 the Collector has sent his report to the Government, which led to the issuance of G.O.Ms.No.102 on 16.4.2007. This undue haste would exhibit non-application mind on the part of the Collector to the individual objections of the land owners.

48. According to the respondents/Government, Tamil Nadu is the preferred destination for industrial activities and many industrial entrepreneurs including the multi national companies prefer Tamil Nadu for establishing their industrial units, particularly in and around Chennai due to its sincere, dedicated and skilled work force, ambient weather conditions and well connected to the major roads, port and airport and hence there is lot of demand for the industrial plots and as such the Government has taken a policy decision to improve industrial infrastructure facility and provide land for establishment of industry in the State, which would, in turn, provide direct and indirect employment to the unemployed and for the speedy acquisition of lands for the industrial purposes, the Government has enacted the said Industrial Purposes Act.

49. No doubt, the Industrial Purposes Act has been enacted as a special Act to speed up the acquisition of land for industrial purposes. But, the Act has never dispensed with the procedure of audi alteram partem and in fact, the Legislature was very cautious in blending the terms in the Act. While clarifying u/s 21 of the Act that "the provisions of the Land Acquisition Act, 1894 shall cease to apply to any land which is required for the purpose of establishing the industries under

this Act", the Legislature has taken every possible caution to protect the interest of the land owners, persons interested and also the occupiers of the lands. In spite of sufficient safeguards have been inducted into the Act by the Legislature, keeping in mind not only the welfare of the land owners but also the other persons, who are interested in such lands, they have been given a simple go-by by the authorities. Strict compliance of the procedure contemplated Under the Act is a must, particularly when the procedure contemplated under the Act itself being a summary one. The non-issuance of the notice to the present owners, even though they have purchased the properties long before the initiation of the impugned acquisition proceedings and in spite of the fact that pattas have also been issued in the names of some of these owners and issuance of the notice in the name of the erstwhile owner, who is dead a decade back, cannot, at any stretch of imagination, be called as a compliance of the scheme of things mandated under the Act.

50. Therefore, as has already been held by us supra, this illegality committed on the part of the respondents/Authorities would vitiate the acquisition proceedings initiated against the properties of these appellants.

51. The judgments relied on by the learned Advocate General, extracted supra, holding that notice issued in the name of the person, whose name has been reflected in revenue records, cannot be made applicable to these cases for the simple reason that these appellants are in possession and enjoyment of the respective properties, pursuant to registered sale deeds/partition deeds executed in their favour and by paying necessary taxes to the authorities concerned, besides some of them obtaining pattas in their name. When all these legal actions on the part of the appellants would suggest that the revenue records should have reflected their names as the owners of the respective properties, the contra contentions made on the part of the learned Advocate General, that too after accepting the fact that chitta books have not been properly maintained by the authorities, cannot be accepted. In view of this factual position, the judgments relied on by the learned Advocate General would not augment the case of the respondents/authorities.

52. At this juncture, we feel it apt to mention that Rule 6 of the Tamil Nadu Acquisition of Land for Industrial Purposes Rules, 2001 deals with the "hearing of objections by the Government". For better understanding we shall now extract hereunder the said Rule:

6. Hearing of objections by the Government-

(a) If a statement of objections is filed by a person who is not interested in the Land, it shall be summarily rejected.

(b) If any objections are received from a person interested in the land, within the time prescribed in rule 3 or 4, the Government shall fix a date for hearing the objections and give notice thereof to the objector or as well as to the department or company requiring the land. Copies of the objections shall also be forwarded

to such department or company. The Department or company may file on or before the date fixed by the Government, a statement by way of answer to the objections and may also depute a representative to attend the enquiry.

(c) On the date fixed for enquiry or any other date to which the enquiry may be adjourned by the Government, the Government shall hear the objector, or a person authorised by him in this behalf, or his pleader and the representative, if any, of the department or company and record any evidence that may be produced by both in support of the objections and in support of the need for acquiring the land.

53. This Rule seeks to ensure free and fair hearing of objections by the Government, which is also the aim of Section 5-A of the Land Acquisition Act. The importance of such an enquiry has been expressed in clear terms by the Honourable Apex Court in *Hindustan Petroleum Corporation Ltd. Vs. Darius Shapur Chenai and Others*, , has held as follows:

8.....The court in a case, where there has been total non-compliance or substantial non-compliance with the provisions of Section 5-A of the Act, cannot fold its hands and refuse to grant a relief to the writ petitioner. Sub-section (3) of Section 6 of the Act renders a declaration to be a conclusive evidence. But when the decision-making process itself is in question, the power of judicial review can be exercised by the court in the event the order impugned suffers from well-known principles viz. illegality, irrationality and procedural impropriety. Moreover, when a statutory authority exercises such enormous power it must be done in a fair and reasonable manner.

9. It is trite that hearing given to a person must be an effective one and not a mere formality. Formation of opinion as regards the public purpose as also suitability thereof must be preceded by application of mind as regards consideration of relevant factors and rejection of irrelevant ones. The State in its decision-making process must not commit any misdirection in law. It is also not in dispute that Section 5-A of the Act confers a valuable important right and having regard to the provisions contained in Article 300-A of the Constitution it has been held to be akin to a fundamental right.

54. Applying these norms also to the cases on hand, we have no hesitation to hold that there is utter violation of the mandatory principles of natural justice, which is not the intention of the very Industrial Purposes Act, which would vitiate the entire proceedings.

55. Coming to the arguments advanced on the part of the appellants that even though the present impugned proceedings were initiated under the Industrial Purposes Act, the District Collector, Kanchipuram has again issued a notification dated 17.12.2009, published in the Tamil Newspapers "Thina Thanthi" on 6.1.2010, on behalf of the Highways Department, and hence the earlier notification has been superseded by the latter one, applying the ratio laid down by the Honourable Apex Court in *Raghunath and Others Vs. State of Maharashtra*

and Others, , extracted above, we have no hesitation to hold that the earlier notification (which is the impugned subject in these appeals) has been superseded and even on this count, no proceedings could be carried on by the authorities/respondents.

56. With regard to the arguments advanced on the part of the appellants that Form "A" notices were not signed by the Collector, an argument has been advanced on the part of the respondents/authorities that u/s 25(2)(b) of the Industrial Purposes Act, the Government may make Rules for the manner of authentication of orders and other instruments of the Collector.

57. Under G.O.Ms.No. 513, Revenue (LAI(1)) Department, dated 2.9.2005, the Government has delegated its powers to District Collectors under the Tamil Nadu Acquisition of Land for Industrial Purposes Act, 1997 thereby directing that all the powers exercisable by the Government under the Act, except the powers excluded in Section 23-A, shall be exercised by the Collectors of the districts concerned. This came into effect from 2.9.2005. Though u/s 25(2)(b) of the Act, it has been mentioned that the Government may make rules to provide or regulate the manner of authentication of orders and other instruments of the Collector, as has been admitted by the Advocate General himself, no such rules have been framed. Therefore, it follows that the District Collectors have to discharge the duties of the Government under the Act. While so, the flimsy reason offered on the part of the respondents/authorities that given the bulk nature, it is practically impossible for the District Collector to sign the "A" Form, cannot be appreciated. The other thing to be pointed out is that when the Collector is able to sign the office copies of the Form "A" notice, as has been submitted on the part of the learned Advocate General, what made the Collector not to sign the original? This question remained unanswered on the part of the respondents/authorities.

58. to the other point urged on the part of the appellants that without declaring the area as an industrial estate", the lands should not be acquired by the Government, we have to once again look into the definition Sections 2(d) and 2(e), whereunder the terms "industrial estate" and "industrial purpose" are defined. u/s 2(e) it has been clearly stated that the term "industrial purpose" includes the starting of a new industry, expansion of an existing industry, the development of an industrial area and establishment and management of an industrial estate". Thus, under this Section not only the starting of a new industry but also the expansion of an existing industry and even the development of an industrial area have been brought into the fold of industrial purpose. In view of the expanded meaning given in this definition clause, in our considered view, no such prior declaration of the area as an industrial estate is necessary before acquiring the land. Accordingly, this argument advanced on the part of the appellants is rejected.

Additional discussion with regard to W.A.No.859/2008:

59. The appellant has constructed a Church with pastor's residence in the ground floor and prayer hall in the first floor during the year 2006 and thereafter formed a Trust under the name and style of "Pillar of Fire of Jesus Ministries". The appellant has produced before us a copy of the patta issued in his name by the revenue authorities on 28.3.1996 bearing Patta No. 1325, which is available at Page No.21 of the second typed set of papers filed by the appellant.

60. The fact that places of worship and public utility like temples, kalyana mandapam, rice mill, petrol bunk etc. were exempted from the scheme was not denied on the part of the Government also. Even though there is voluminous material on record to show that the appellant has represented to the authorities for the same relief, the same was paid deaf ears by the authorities, compelling him to initiate the present writ proceedings. When the appellant's name has been mutated into the revenue records and he was also issued with a patta, the argument advanced on the part of the Government that they have issued notice in the name of Mr. Jayaraman, the original owner since the revenue records reflected the name of only Mr. Jayaraman, cannot be appreciated. The sale of this appellant was a registered one and he was also issued with the patta. The appellant was attending to the religious activities, as could be seen from the photographs filed in the typed set of papers filed before us. Therefore, while on one hand, the acquisition proceedings are bad for non-issuance of the mandatory notice to the appellant, on the other hand, the appellant is also entitled for exemption for the property under the caption of place of worship as the respondents/authorities have failed to explain, much less legally, as to what had prompted them to discriminate this appellant for exemption, while such other similarly placed organisations have been exempted from the purview of land acquisition. This acquisition of the land belonging to a religious worship is against the very policy of the Government as could be seen from G.O.No.1630 Revenue Department, dated 26.9.1984, whereby and whereunder the Government has evolved a policy of not acquiring the places of religious worship. On all these counts, the appellant's case need to be upheld and accordingly, this writ appeal is allowed.

Additional discussion with regard to W.A.No.863/2008:

61. The fact that the appellant herein is running a small scale industry in the property, after purchase of the same, has not been denied on the part of the respondents. The industry being run by the appellant is a tiny industry, for which the Industries and Commerce Department has also issued a Registration No.3303102158 on 20.11.2006. Even prior to the establishment of the present tiny industry by the appellant, there was a rice mill run by the family of the appellant and only after demolition of the same, the present shopping complex has been built by the appellant.

62. The purpose of the present impugned acquisition is to allot plots to the small scale industries. When the factum of the appellant running a tiny industry in the area has not been denied or disputed by the authorities by producing any

material, we wonder as to what desired purpose would be served by acquiring the lands of the already existing tiny and small scale industries and allotting the same lands to the other small scale industries to commence their business operations. We are unable to appreciate this action adopted on the part of the Government. Hence, this appeal is entitled to be allowed not only on the fact that no proper notice has been issued to her, but also on the ground that such a tiny industry should not be disturbed for establishing an industrial area in the locality.

63. From the above discussion, we arrive at the following conclusions:

(i) The appellants in W.A.Nos.855 and 856 of 2008, being the purchasers, after initiation of the acquisition proceedings, are not entitled to any relief and accordingly, these two writ appeals are liable to be dismissed.

(ii) Non-service of individual notices on the appellants in W.A.Nos.781, 782, 799, 800 and 859 to 863 of 2008, in spite of the fact that they have purchased the properties long before the initiation of the acquisition proceedings and mutation in the revenue records and issuance of notices in the name of the original owner Mr.Jayaraman, who is dead a decade prior to the initiation of the acquisition proceedings vitiates the acquisition proceedings.

(iii) Notice issued in the name of a dead person is non-est in law.

(iv) The lock, stock and barrel rejection of the lawful objections raised by the appellants in W.A.Nos.781, 782, 799, 800 and 859 to 863 of 2008, by the District Collector, in the process of his undue haste in sending the report to the Government, also vitiates the acquisition proceedings.

(v) Coming to the arguments advanced on the part of the appellants that even though the present impugned proceedings were initiated under the Industrial Purposes Act, the District Collector, Kanchipuram has again issued a notification dated 17.12.2009, published in the Tamil Newspapers "Thina Thanthi" on 6.1.2010, on behalf of the Highways Department, and hence the earlier notification has been superseded by the latter one, applying the ratio laid down by the Honourable Apex Court in Raghunath and Others Vs. State of Maharashtra and Others, , extracted above, we have no hesitation to hold that the earlier notification (which is the impugned subject in these appeals) has been superseded and even on this count, no proceedings could be carried on by the authorities/respondents.

(vi) As the Collector has been delegated with the powers of the Government under the Act and as no Rules have been framed u/s 25(2)(b) for the Collector to delegate his such powers, non-signing of Form "A" by the Collector cannot be appreciated.

(vii) In view of the wordings in Sections 2(d) and 2(e) of the Industrial Purposes Act, no prior declaration of declaring the area as an industrial estate, before acquiring the land for industrial purposes is necessary.

(viii) Since the appellant in W.A.No.859 of 2008 is running a place of worship, which are excluded categories of acquisition, he is entitled for exemption accordingly.

(ix) As the appellant in W.A.No.863 of 2008 is running a tiny industry and as the entire impugned acquisition is for industrial purposes, no sanctity could be attached to the move of the respondents/authorities in seeking to acquire the lands of the appellant in W.A.No.863 of 2008 also. Therefore, this appellant is also entitled for exemption. Similar is the position with regard to the appellant in W.A.No.799 of 2008 also, who has obtained proper licence from the Industries Department for running an industry in the locality.

In the result,

- (i) W.A.Nos.855 and 856 of 2008 are dismissed.
- (ii) W.A.Nos.781, 782, 799, 800 and 859 to 863 of 2008 are allowed.
- (iii) All the connected Miscellaneous Petitions are closed.
- (iv) No order as to costs.