

(2008) 04 MAD CK 0020

In the Madras High Court

Case No : Writ Petition No. 12312 of 1998

Smt. Leelavathi

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 10-04-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 4(4)
Land Acquisition Act, 1894 — Section 13, 4(1), 45, 55(1), 5A

Citation : (2008) 3 CTC 490 : (2008) 5 MLJ 1063

Hon'ble Judges : P. Jyothimani, J

Bench : Single Bench

Advocate : AR. L. Sundaresan for AL. Gandhimathi, for the Appellant; Hasan Fizal, GA for R.1 and 2 and R. Girirajan, for R.3, for the Respondent

Final Decision : Allowed

Judgement

P. Jyothimani, J.—The challenge in this writ petition is the notification issued u/s 4(1) of the Land Acquisition Act, 1894 dated 06.09.1996

and 6 declaration dated 04.11.1997 in respect of lands of the petitioner in Survey No. 366 to an extent of 3.03.0 hectares and in S. No. 367 to an

extent of 0.95.0 hectares in No. 12, Kalapatti Village, Coimbatore Taluk.

2. According to the petitioner, the above said property is the ancestral property of her deceased father Karamadai Naicker and after his death, the

petitioner and her sister entered a partition deed on 28.09.1992, according to which the petitioner is in possession of the above said lands, which

are the subject matter of acquisition.

2(a). The further case of the petitioner is that she has developed the property into house sites by spending more than Rs. 2 lakhs and prepared a

lay-out and gifted the same to the Kalapatti Panchayat Union by gift deed dated

17.12.1996 for public purposes.

2(b). The second respondent has also issued a certificate dated 25.01.1995 to the effect that the lands in S. No. 366, 378 and 381 were not the

subject matter of any land acquisition proceedings. The Revenue Tahsildar has also issued a certificate on 12.06.1996, stating that S. No. 367 was

not subject to any acquisition. However, by letter dated 05.12.1997, received from the Director of Town and Country Planning, Madras, the

petitioner came to know that the above lands were acquired and hence, the approval for the lay-out was refused.

2(c). The petitioner understands that the property has been acquired for the public purpose of providing house sites under Neighbourhood Scheme

and declaration u/s 6 of the Act has been issued on 04.11.1997 and the petitioner was not given an opportunity at any point of time to participate

in the enquiry. According to the petitioner, the notification u/s 4(1) of the Land Acquisition Act, 1894 (in short, "the Act") was issued in the name of

her father Karamadai Naicker, who was not alive on the date of notification.

2(d). It is the further case of the petitioner that the substance of 4(1) notification was not published in the village in proper manner. There was no

notice for enquiry u/s 5-A of the Act, served on the petitioner. After the partition between the petitioner and her sister dated 13.11.1992 under the

registered document in Document No. 6715/92, the petitioner has executed a gift deed in favour of public authorities regarding the place set apart

for public purpose as per the lay out.

2(e). Section 4(1) notification and 6 declaration were questioned on various grounds, including that it is a mala fide exercise of powers vested with

the respondents, since only the petitioner's lands have been chosen for acquisition; that 4(1) notification was published in the name of dead person;

that 5-A enquiry was vitiated for the reason that the actual owner, viz., the petitioner was not served with the notice and no opportunity was given

to her and therefore, it is in violation of the principles of natural justice; that after coming to know about the notice dated 24.12.1996, affixed near

her lands, the petitioner submitted her objection on 15.01.1997 and the same has not been considered; that 4(1) notification was published in a

Tamil daily "Pirpagal" which was not actually having wide circulation and therefore, the mandatory requirements of Section 4(1) of the Act are not

complied with; that according to the petitioner, as per G.O.Ms. No. 620 Housing and Urban Development Department, dated 29.06.1990, it was

informed that the Tamil Nadu Housing Board should avoid acquisition proposal in respect of lands where lay-out was approved by the Director of

Town and Country Planning and the layout was approved in respect of the petitioner's lands as early as on 30.10.1995 and the petitioner has

gifted the lands of an extent of 1.75 acres to the Panchayat Union for public purposes by gift deed dated 17.12.1996 and therefore, it cannot be

said that the respondents are not aware of the fact that the petitioner is the owner of the property; and that the mandatory requirement under the

Act to effect service of personal notice has not been fulfilled.

3. The Tamil Nadu Housing Board has subsequently filed a petition to implead itself as a party and ultimately it was impleaded as third respondent

as per the order dated 23.03.2007 and thereafter, the Housing Board has filed a counter affidavit. As per the counter affidavit, notification u/s 4(1)

of the Act was approved in G.O.Ms. No. 385 Housing and Urban Development dated 06.09.1996 and published in the gazette on 23.10.1996

and the substance of the notification was published in ""Murasoli"" and ""Pirpagal"" on 31.10.1996 and in the locality on 08.11.1996. Enquiry u/s 5-A

of the Act was conducted on 17.06.1997 after observing usual formalities and after publication and service of the required notice as per the rules

framed u/s 55(1) of the Act. The objections filed by the interested persons were forwarded to the Executive Engineer and Administrative Officer,

Coimbatore Housing Unit, Coimbatore and the remarks of the said Executive Engineer were also communicated to the interested persons and

thereafter, the declaration u/s 6 was approved in G.O.Ms. No. 390 Housing and Urban Development Department dated 04.11.1997 and

published in the gazette on 05.11.1997. It was at that stage, the petitioner has filed the above writ petition against the acquisition.

3(a). It is the case of the third respondent that while issuing notification u/s 4(1), names of the pattadars were furnished as per village chitta and in

respect of the lands in question, the name of pattadar found in the revenue records was Karamadai Naicker. It is also stated that Form-B for

enquiry u/s 5-A was duly published in the vicinity and the petitioner has also sent her objections on 15.1.1997. It is also stated that Section 6

declaration has been published within one year from the date of 4(1) notification. In respect of the locality publication it was effected on

08.11.1996 and therefore, there is no procedural irregularity.

3(b). The approval of lay-out by the Director of Town and Country Planning on 30.10.1995 was after the original proposal for acquisition started

in 1988, but prior to Section 4(1) notification, which was on 06.09.1996. The mere approval of lay-out is not a bar for proceeding with

acquisition. According to the third respondent, the interested persons were enquired and notice intended to the owners have been served as per

Section 45 of the Act.

3(c). According to the third respondent, the persons whose names find place in the revenue records alone will be given notice. G.O.Ms. No. 620

dated 29.06.1990 is not applicable to the case of the petitioner since the land acquisition proposal was started in the year 1988, that is prior to

publication of 4(1) notification, and the lay-out has been approved by the Director of Town and Country Planning only on 30.10.1995.

4. Even though the first and second respondents have not filed any counter affidavit, the learned Government Advocate has produced the files

relating to the acquisition proceedings.

5. Mr.AR.L.Sundaresan, learned senior counsel appearing for the petitioner would submit that the Director of Town and Country Planning has

approved the lay-out presented by the petitioner, as admitted by the third respondent, Housing Board itself on 30.10.1995 and it was after that

approval the petitioner has earmarked various portions as per the lay-out for public purposes by registered gift deed dated 17.12.1990. He would

also submit that the second respondent himself has issued a certificate on 25.01.1995 to the effect that there was no 4(1) notification published in

respect of S.Nos.366, 378 and 381. The learned senior counsel fairly admits that as per the counter affidavit of the third respondent, the locality

publication of Section 4(1) notification was made on 08.11.1996 and 6 declaration was on 04.11.1997, and hence, the time between the said 4(1)

notification and 6 declaration is in time.

5(a). He would submit that inasmuch as the partition deed was effected on 28.09.1992, by which the property got in her name was gifted to the

Panchayat Union on 17.12.1996 after getting the lay-out approved by the

Director of Town and Country Planning in 1995 and in spite of it

Section 4(1) notification was issued in the name of a dead person which is not valid. He would also submit that in respect of S. No. 367, the

Tahsildar has issued a letter addressed to the petitioner dated 12.06.1996 stating that the said Survey Number is not involved in any land

acquisition proceedings.

5(b). He would also submit that the Director of Town and country Planning in his letter dated 04.11.1996 addressed to the petitioner after the 4(1)

notification, directed the petitioner to pay some charges regarding the approval of layout and even in that, there was no whisper about 4(1)

notification. He would also submit that the acquisition regarding neighbouring lands under the same Scheme has been quashed by this Court. The

learned senior counsel would rely upon various judgements, including

(i) 1989 WLR 89 [P.C. Thanikavelu v. The Special Deputy Collector for Land Acquisition, Madras.]

(ii) 1993 (1) MLJ 217 [Muthuswamy v. State of Tamil Nadu]; and

(iii) Miss. Asiya Mariyan Vs. The Secretary to Government of Tamil Nadu. Adi-Dravidar and Tribal Welfare Department, Fort St. George,

Madras and another, , to substantiate his contention that 5-A enquiry is invalid, since persons interested were not heard.

5(c). He would also rely upon the judgement of the Division Bench of this Court in Savithiriammal Vs. The State of Tamil Nadu, , wherein the

Division Bench has held that notice against the dead person vitiates the entire acquisition proceedings. Further, he would rely upon the judgement in

M.Velayutham and Ors. v. State of Tamil Nadu 2006 (5) CTC 585 and in The Secretary to Government of Tamil Nadu, Housing and Urban

Development and The Special Deputy Collector, Land Acquisition Cell, C.M.D.A. Vs. J. Sivaprakasam and Others, , to substantiate his

contention that the publication in this case is not proper.

6. On the other hand, it is the contention of the learned Counsel for the respondents that Section 5-A notice was not sent to the petitioner because

the mutation of records was not effected in the name of the petitioner. It is his contention that the notice sent to the petitioner's father was received

by one of his daughters, Kuttiammal and notice sent to the petitioner - Leelavathi and Kuttiammal for 5-A enquiry was returned as left. Therefore,

the respondents have taken steps to serve on the legal heirs. At the time when the enquiry was conducted u/s 5-A of the Act on 17.06.1997, the

petitioner had knowledge about the acquisition proceedings. It is also his further contention that the newspaper ""Pirpagal"" in which the publication

was made is also a registered newspaper.

6(a). The learned Counsel for the third respondent would vehemently contend that while conducting enquiry u/s 5-A of the Act, a roving enquiry is

not contemplated, by relying upon the judgement of the Supreme Court in W.B. Housing Board and Others Vs. Brijendra Prasad Gupta and

Others, .

7. I have heard learned Counsel appearing for the petitioner and learned Counsel for respondents and perused the file produced by the learned

Government Advocate.

8. Admittedly, Section 4(1) notification was published in the gazette on 23.10.1996 and the newspaper publication was effected in two

newspapers on 31.10.1996 and the locality publication of 4(1) notification was made on 08.11.1996, duly certified by the Special Tahsildar with

the signature of residents of local people. However, the said 4(1) notification in respect of the property in question was issued in the name of

Karamadai Naicker. In the light of the local publication effected in the manner known to law regarding 4(1) notification dated 06.09.1996; 6

declaration was issued on 04.11.1997 and published in the gazette on 05.11.1997; newspaper publication was made on 06.11.1997 and locality

publication was made on 07.11.1997 and as fairly admitted by the learned senior counsel for the petitioner, the point regarding the period of one

year from the date of 4(1) notification to the date of Section 6 declaration need not be considered in this case, since the declaration u/s 6 has

been made within the time as per law.

9. The next contention of the learned senior counsel for the petitioner is that the Revenue Tahsildar, Coimbatore North has issued a certificate to

the petitioner on 12.06.1996 stating that the property comprised in S. No. 367 to the extent of 0.95.5 hectares does not include any poramboke

land and as on that date, there was no 4(1) notification issued. By letter dated 25.01.1995, the second respondent himself has stated that

S.Nos.366 and 378 to 381 were not subject matter of any 4(1) notification. His

submission is that as per the layout approved, the petitioner has in fact executed a registered gift deed on 17.12.1996 in favour of the Executive Officer of the Kalapatti Panchayat and if really 4(1) notification was issued on 06.09.1996, the gift deed would not have been registered.

10. On the other hand, it is the case of the third respondent, Housing Board, which is the requisitioning body in this case that the revenue records stood in the name of the petitioner's father Karamadai Naicker, in whose name 4(1) notification was issued. In such circumstances, the contention

of the learned senior counsel as to its legality as stated above cannot be sustained. It is seen that the notice u/s 5-A enquiry, which was addressed to Karamadai Naicker has been received by Kuttiammal, as the daughter of the said Karamadai Naicker. That was the notice fixing the enquiry on

21.01.1997 and subsequently the enquiry was adjourned to 17.06.1997. Another notice in Form-B as per Section 5A of the Act, which was

addressed to Karamadai Naicker was received by Kuttiammal again on 14.05.1997 with an endorsement that Karamadai Naicker died and the

same has been served to Kuttiammal, being his daughter. In addition to that, another copy of Form-B notice dated 14.05.1997, has been sent to

Kuttiammal by registered post, which has been returned. Likewise, similar notice posting the 5-A enquiry on 17.06.1997 was sent to the petitioner

also by registered post, which has been returned. It is in the file that (as it is seen from page Nos. 37 and 43) Kuttiammal, having received the

notice has informed the authorities for the first time on 14.05.1997 that her father died and having received the notice on two occasions, she has

failed to appear for the enquiry.

11. It is also seen that after hearing all other neighbouring owners who have participated in the enquiry, the Special Tahsildar (LA) in his

proceedings dated 04.08.1997 recommended that the declaration to be published u/s 6 of the Act on the basis that the properties are situated in

the middle of the larger Scheme and thereafter, 6 declaration was published in the gazette dated 04.11.1997 and it is also seen that the said

declaration stands in the name of the petitioner Mrs. Leelavathi Ammal and her sister Mrs. Kuttiammal. It is also seen from the file that notice u/s

9(3) of the Act for the purpose of award enquiry dated 20.09.1999 has been received by the daughter-in-law of Mrs. Kuttiammal, viz.,

S.Sarveswari, who has endorsed that, ""this land is sold"". However, the said notice to the petitioner was affixed on the place of the petitioner,

where she has resided last with an endorsement by the Village Administrative Officer and thereafter, award has been passed on 28.10.1999 and

the amount has been deposited in the Sub-Court. However, the present writ petition has been filed before passing of the award.

12. It is in the light of the factual situation in the files which has been perused, we have to consider the next contention of the learned senior counsel

for the petitioner that Section 4(1) notification has been issued in the name of Karamadai Naicker and on the said date of 4(1) notification, the said

Karamadai Naicker died and therefore, the entire proceedings should be vitiated. In Savithiriammal Vs. The State of Tamil Nadu, , the Division

Bench of this Court consisting of P.Sathasivam,J.(as he then was) and V. Dhanapalan, J., dealt with almost a similar circumstance wherein the

daughter of deceased father has specifically raised an objection that 4(1) notification is illegal since her father died even on 06.03.1987 whereas

4(1) notification was issued on 14.06.1995. In spite of the objection raised, the authorities have not taken steps to rectify the 4(1) notification and

also issued 6 declaration in the name of the deceased person. It was in those circumstances, the Division Bench, applying series of judgements on

the issue, viz., Muthusamy v. State of Tamil Nadu 1993 (1) MLJ 217; V. Devaraj, V. Sundararajan, V. Damodarasamy, Dr. V. Ramachandran

and V. Lakshminarayanamsami Vs. The State of Tamil Nadu, ; Miss. Asiya Mariyan Vs. The Secretary to Government of Tamil Nadu. Adi-

Dravidar and Tribal Welfare Department, Fort St. George, Madras and another, , has quashed the notification issued u/s 4(1) of the Act in the

following operative words:

5. This Court, in Muthusamy v. State of Tamil Nadu 1993 (1) MLJ 217; V. Devaraj, V. Sundararajan, V. Damodarasamy, Dr. V. Ramachandran

and V. Lakshminarayanamsami Vs. The State of Tamil Nadu, ; Miss. Asiya Mariyan Vs. The Secretary to Government of Tamil Nadu. Adi-

Dravidar and Tribal Welfare Department, Fort St. George, Madras and another, ; and in series of other decisions, h held that Notice/Notification

issued in the name of the dead person and the proceedings with respect to the said lands cannot sustained. By applying the said principle, we

accept the contention of the learned Counsel for the appellant and quash the Notification issued u/s 4(1), dated 14.6.1995. Consequent, the writ appeal is allowed.

13. In a subsequent judgement of the Division Bench rendered in G.S. Gopalakrishnan and 2 Ors. v. Government of Tamil Nadu and 2 Ors. 2006

(3) LW 936 , wherein after the death of the original owner, the property has gone to various persons and the subsequent purchasers have

challenged the acquisition on the ground that 4(1) notification was issued in the name of dead person C.Kondappa Naidu. While it was admitted

that when the original owner died, the property has been transferred to various persons, and at the instance of the subsequent purchasers, 4(1)

notification was challenged, the Division Bench in the above said case has considered the earlier judgement reported in Savithiriammal Vs. The

State of Tamil Nadu, and distinguished it by saying that the earlier case was relating to the legal heir of the deceased father, who in fact informed

during the time of 5-A enquiry that her father died and in spite of it 6 declaration was issued in the name of dead person. By holding that as a

general principle of law, proceedings against dead person are null and void, the Division Bench has found that Order 22 of the CPC deals with the

procedure to be followed in the case of death and held that the Land Acquisition Act does not make it obligatory on the authority to conduct a

roving enquiry to find out the actual owners, beyond the names reflected in the revenue records for the reason that it cannot be expected of the

acquiring authorities to find out whether the patta holder is alive or dead. In that view of the matter, based on the judgement of the Supreme Court

in U.P. Jal Nigri v. Kalra Properties (P) Ltd. 1963 (3) SCC 125, the subsequent Division Bench has held that the land acquisition proceedings are

not nullity on the basis that the proceedings were issued in the name of a dead person unless it is established that the fact of death was brought to

the notice of the authority at the appropriate stage. The operative portion of the judgement of the Division Bench is as follows:

10. A Division Bench of this Court considered, in the case of Savithiriammal Vs. The State of Tamil Nadu, , the validity of a notification issued in

the name of a dead person and held that ""the notification issued in the name of a dead person is a nullity and the proceedings cannot be sustained

based on the said notification". But in para-3 of the said judgement, the learned Judges recorded a finding that the factum of death of the original owner was brought to the notice of the authorities even during the enquiry u/s 5-A and that despite the same, the authorities did not carry out necessary changes in the Section 6 declaration also. In view of such a finding, the Bench quashed the entire proceedings and that too at the instance of the legal heir of the deceased owner. But in the case on hand, the property has changed several hands and the appellants purchased the plots much after the award enquiry was over. It is not the case of the appellants that anyone ever brought to the notice of the acquiring authorities, the fact that the original owner was dead. Under such circumstances it is difficult to comprehend as to how the authorities can be expected to know that the original owner was dead. We are entirely in agreement with the views expressed by the learned Judges in the aforesaid cases, especially in the light of their finding in those cases that the acquiring authorities had knowledge of the death of the owner of the lands.

11. It is true that as a general principle of law, proceedings against dead persons are null and void. But this principle is not without exception.

Order 22 of the CPC which deals with the procedure to be followed in the case of death, marriage and insolvency of parties, carves out one such exception to the said principle under Sub-Rule (4) of Rule 4, which reads as follows:

(4) The Court whenever it thinks fit, may exempt the plaintiff from the necessity of substituting the legal representatives of any such defendant who has failed to file a written statement or who, having filed it, has failed to appear and contest the suit at the hearing; and judgement may, in such case, be pronounced against the said defendant notwithstanding the death of such defendant and shall have the same force and effect as if it has been pronounced before death took place.

12. This Sub-Rule (4) under Rule 4 of Order 22 was introduced by way of the CPC (Amendment) Act, 1976 and this amendment drew its inspiration only from an amendment already made by Calcutta, Madras, Karnataka and Orissa High Courts.

13. Thus it could be seen that even under the CPC where the rigours of impleading necessary and proper parties and service of notice are more

pronounced than in proceedings under special enactments, it is not made an universal rule that such proceedings against dead persons are null and void.

14. In a case arising under the Bombay Land Requisition Act, 1948, in *Lilavati Bai Vs. The State of Bombay*, , the Constitution Bench of the

Supreme Court had an occasion to consider whether an order of requisition issued under the said Act in the name of a dead person was

enforceable or not. Over-ruling the contention of the petitioner that such a notice was unenforceable, the Apex Court held as follows:

13. The only other contention which remains to be dealt with is that the order impugned in this case is not enforceable because it was directed

against the petitioner's husband, who was dead at the date of the order, besides the other two persons indicated in it who were not concerned

with the premises. In our opinion, there is no substance in this contention either. An order like the one passed u/s 6(4)(a) of the Act is not in the

nature of an order in judicial proceedings between the Government on the one hand and other parties named. If the proceedings were intended by

the Act in the sense of judicial or quasi-judicial proceedings between named parties, it may have been legitimately argued that an order passed

against a dead man is a complete nullity. But the order proceeds on the basis that the tenant had ceased to be in occupation of the premises in

October 1952, apparently by reason of the fact that he had handed over possession of the premises to the so called "lodger" or "paying guest".

Admittedly the petitioner's husband died after October 1952. The occupation by the said Narottamdas Dharamsey Patel was in the nature of an

unauthorised occupation. The fact that the petitioner's husband was dead on the date of the order impugned has only this effect that in so far as it

mentions his name as one of the persons to be served u/s 13 of the Act should be erased from the order. But even so, it does not affect the

enforceability of the same. Section 13 lays down the different modes of service of an order passed under the Act according as the order is of a

general nature or affecting a class of persons or an individual, corporation or firm. We are here concerned with the case of an individual and the

section lays down that it can be served either personally by delivering or tendering the order to him or by post or where he cannot be found, by

affixing a copy of the order to some conspicuous part of the premises in which he is known to have last resided.

15. Thus, it could be seen from the law laid down by the Apex Court that a distinction was always maintained between judicial/quasi-judicial

proceedings and other proceedings. In so far as the scheme of the Land Acquisition Act, 1894 is concerned, it envisages various types of notices

at various stages. Section 4(1) notification is required to be gazetted followed by publication in two dailies having circulation in the locality and a

local publication. The opportunity provided u/s 5-A is actually for "persons interested" and not necessarily the land owners. This enquiry is

followed by a Section 6 declaration and the Act thus provides innumerable opportunities to ""persons interested"" in objecting to the acquisition. The

Land Acquisition Act does not limit its reach to ""owners of land"", but enables any person interested in the land to have a say. Moreover, the

liability of the acquiring authorities to serve a notice of enquiry is also restricted only to persons whose names find a place in the revenue records.

When the Act does not even make it obligatory for the acquiring authorities to conduct a roving enquiry to find out the actual owners, beyond the

names reflected in the revenue records, it cannot be expected of the acquiring authorities to find out if the patta holder is alive or dead.

16. In any event, in the case on hand, the Award itself was passed on 19.12.1991 and as per the counter-affidavit filed by the respondents in the

writ petition, the possession was also taken on 13.8.1992. The appellants 1 to 3 herein purchased the plots much after the Award enquiry under

the sale deeds dated 26.10.1994, 28.9.1992 and 24.2.1993 respectively. Therefore, the appellants, who are subsequent purchasers, are not

entitled to maintain a challenge to the acquisition proceedings in view of the law laid down by the Supreme Court in U.P. Jal Nigam, Lucknow

through its Chairman and another Vs. M/s. Kalra Properties (P) Ltd. Lucknow and others,

17. Therefore in our considered opinion, the normal principle that proceedings against a dead person are a nullity, cannot be imported to

proceedings under the Land Acquisition Act, 1894, unless it is established that the factum of death was brought to the notice of the acquiring

authorities at the appropriate stage. Hence, the order of the learned Judge does not call for any interference and the writ appeal is dismissed

without any order as to costs. Consequently, connected WAMP is also dismissed.

14. Therefore, applying the above said judgement to the facts of the present case, it is clear from the records that when 5-A enquiry notice was

served on the sister of the petitioner, viz., Kuttiammal on 14.05.1997, an endorsement was made to the effect that Karamadai Naicker died and

thereafter, notice served on his daughter, being his legal heir. Therefore, it can be clearly inferred that at the time when the 5-A enquiry was about

to start and when notice for 5-A enquiry was served, the authorities were informed about the death of the original owner and similar notices have

been served on the petitioner and also on the other daughter of the original owner and having known about the factum of death of the owner, the

respondents ought to have taken steps to either rectify 4(1) notification or issued fresh 4(1) notification. Even though the subsequent 6 declaration

has been issued in the name of the petitioner, inasmuch as 4(1) notification has been allowed to continue in the name of dead person in spite of the

information given to the respondents about the death of the original owner, the 4(1) notification having become non est in law, the subsequent

proceedings cannot be validated.

15. The Supreme Court in W.B. Housing Board and Others Vs. Brijendra Prasad Gupta and Others, has held that under the West Bengal (Land

Requisition and Acquisition) Act, 1948, the person whose name has been recorded as owner has already sold the land to some other person prior

to the acquisition by the Government, but the name of the purchaser was not entered on record in spite of application for mutation was made. In

such circumstances it was held that the service of order was valid and the Collector cannot be expected to make a roving enquiry about the

ownership of the land. However, on the facts and circumstances of the present case it is clear that even without any enquiry the factum of death of

original owner has been informed to the respondents and even thereafter, the respondents have not taken steps for the purpose of rectifying the

defects. Further, in the said case, the Supreme Court has clearly held that what is happening in one Department may not be known to some other

Department of the Government, knowing the working of the Government Offices. In that context it was held that expecting the Collector to ask for

a report from the prescribed authority with whom mutation of record was

pending will be expecting too much from the Collector and it was not a part of the duty of the Collector to make a roving enquiry about the ownership of the lands in question. The Supreme Court held as follows:

8. ...The Division Bench has observed that the Collector would have been aware of the pendency of the applications of the writ petitioners for

mutation of lands in their names when the same were pending in his office. The Bench in effect observed that it was a case where the right hand did

not know what the left hand was doing. This observation sounds good, but knowing the working of the government officers it appears to have no

place. Of course, the Collector could have asked for a report from the prescribed authority concerned if any application for mutation of the land

was pending with him. But that would be expecting too much from the Collector. It is no part of the duty of the Collector to make a roving inquiry

into ownership of the persons. We are of the opinion that the requirements of the law were met when notices were served upon the recorded

owners as per the Record of Rights....

16. It is true, as laid down by the Supreme Court that when the factum of death of the person was not recorded in the revenue records or the same

was not informed to the authorities under the Land Acquisition Act, it cannot be expected to make roving enquiry about the ownership of the

property, but on the facts and circumstances of the present case, it is seen that the factum of death of the original owner has been informed by the

daughter and in spite of the same the respondents have not taken any steps to rectify the mistake. In those circumstances, the judgement of the

Division Bench of this Court in Savithiriammal Vs. The State of Tamil Nadu, will squarely apply to the facts of the case.

In view of the same, the notification issued u/s 4(1) of the Land Acquisition Act, 1894 dated 06.09.1996 and the 6 Declaration dated 04.11.1997,

are set aside and the writ petition stands allowed. No costs.