
(2014) 11 MAD CK 0068
In the Madras High Court
Case No : S.A. No. 396 of 2011

T. Amuthan Anthony

APPELLANT

Vs

C.S. Balakrishnan and Others

RESPONDENT

Date of Decision : 05-11-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 2, 80(1), 80(2), 9, 96
Constitution of India, 1950 — Article 136, 226
Land Acquisition Act, 1894 — Section 4, 4(1), 6
Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 — Section 24(2)

Citation : (2015) 1 LW 921

Hon'ble Judges : T. Raja, J

Bench : Single Bench

Advocate : Chitra Sampath, Senior Counsel for A.R. Sakthivel, Advocates for the Appellant; N.V. Nagasubramaniam, Advocates for the Respondent

Judgement

T. Raja, J.—The plaintiff before the trial Court is the appellant in this second appeal. For the sake of convenience, the parties are described as "the plaintiff" and "the defendants" in this judgment. The plaintiff-Mr. T. Amuthan Anthony filed two suits before the City Civil Court, Chennai, namely, the suit in O.S. No. 188 of 1996 was filed against the Chairman, Tamil Nadu Housing Board, one Mr. C.S. Balakrishnan, one Mr. K. Damodaran, the Commissioner, Corporation of Chennai, the Member Secretary, Chennai Metropolitan Development Authority and the Sub Registrar, Anna Nagar seeking for a judgment and decree of mandatory injunction, more particularly, against the first defendant to cancel the allotment order issued in favour of the second defendant-Mr. G.S. Balakrishnan along with permanent injunction against the fourth and fifth defendants restraining them from sanctioning any building plan in favour of the second defendant as well for permanent injunction restraining the sixth defendant from registering any kind of documents to be presented by the second defendant along with costs and one another suit in O.S. No. 2350 of 2002 was filed against the sole defendant-Mr. C.S. Balakrishnan for a judgment and decree of permanent injunction restraining

the sole defendant from interfering with the peaceful possession and enjoyment of the suit property along with costs, on the ground that the suit property to an extent of 38 cents covered in Survey No. 207/13 part, equivalent to old Baimash No. 482, was purchased in the name of one Mr. Ammavasai, the brother of the plaintiff's grandfather Mr. Vaitan and registered in the office of Sub Registrar, Sembium, Madras bearing Sale Deed No. 1702/1914. Subsequently, after a partition between the brothers of his grandfather Mr. Vaithan and Mr. Ammavasai, the said Mr. Vaitan acquired the right over the property of 18 cents and obtained the patta. It was also the further claim of the plaintiff that since the suit property is the ancestral property of the plaintiff's family, after the death of his grandfather Mr. Vaithan and his father Mr. Thirumani, the plaintiff has been in possession and enjoyment of the same. During his continuous possession, when he had put up construction in the property, one Mr. P. Arjunan and Mr. Murali started to interfere with the plaintiff's peaceful possession and enjoyment of the same, hence, the plaintiff filed a suit in O.S. No. 8859 of 1995 on the file of IV Assistant Judge, City Civil Court, Madras seeking for permanent injunction and the same came to be decreed on 17.4.96. While so, the second defendant, claiming to have got allotment of the suit property from the Tamil Nadu Housing Board, started to interfere with the plaintiff's possession. Consequent thereto, the plaintiff filed C.S. No. 188 of 1996 against the first defendant-Tamil Nadu Housing Board, the second defendant-Mr. C.S. Balakrishnan and others for mandatory injunction against the first defendant to cancel the allotment order issued in favour of the second defendant and for other reliefs. After the filing of the first suit in O.S. No. 188 of 1996 seeking a decree for permanent injunction against the defendants therein, the plaintiff has also filed another suit in O.S. No. 2350 of 2002 against the sole defendant Mr. C.S. Balakrishnan, who claimed to be an allottee by the Tamil Nadu Housing Board in respect of the suit property, for the reason that when the plaintiff had already filed W.P. No. 11624 of 1997 before this Court under Article 226 of the Constitution of India challenging the acquisition proceedings, inasmuch as the second defendant-Mr. C.S. Balakrishnan was said to have been allotted with the suit property by the Tamil Nadu Housing Board, this Court dismissed the said writ petition observing that the plaintiff has got an alternative remedy of filing a suit for identification of the suit property by adducing oral and documentary evidence, namely, the land in Survey No. 207/13 part of Tirumangalam village, Saidapet Taluk and whether the property belongs to the plaintiff and that to what relief the plaintiff was entitled to from the Tamil Nadu Housing Board for having taken possession of the said land as if the land was taken over pursuant to the land acquisition proceedings. The further claim of the plaintiff in the second suit shows that as the suit property is an ancestral property, as such, without acquiring the land under the provisions of the Land Acquisition Act, the Tamil Nadu Housing Board cannot forcibly take possession of the same and allot it to the second defendant. A detailed written statement was filed in O.S. No. 188 of 1996 by the first defendant, the Chairman, Tamil Nadu Housing Board, Madras taking a specific and explicit stand that the suit filed against the Tamil Nadu Housing Board was not maintainable, since the

mandatory pre-suit notice was not issued by the plaintiff as contemplated under Section 138 of the Tamil Nadu Housing Board Act, 1961. One another categorical stand taken by the Tamil Nadu Housing Board under Section 88 of the Tamil Nadu Housing Board Act was against the bar of jurisdiction of Courts, since no order made by the Government or the competent authority in exercise of powers conferred under the Chapter shall be called in question in any Court and no injunction shall be granted by any Court in respect of any action taken or to be taken in pursuance of any power conferred under the Chapter. Admittedly, since the suit was filed against the Chairman of Tamil Nadu Housing Board without issuing the mandatory pre-suit notice as contemplated under Section 138, the Tamil Nadu Housing Board sought for dismissal of the suit.

2. The second defendant also filed a detailed written statement stating that Section 70 of the Tamil Nadu Housing Board Act empowers the Housing Board to acquire any land under the provisions of the Land Acquisition Act, 1894. Similarly, Section 72 also empowers the Housing Board to sell, exchange or otherwise dispose of any land vested in or acquired by it. Pursuant to the above legal position, the Tamil Nadu Housing Board, in exercise of its statutory powers, framed a scheme, popularly known as "Aringnar Anna Nagar Scheme, Chennai". The State Government also acquired large extent of land in Naduvangarai, Tirumangalam villages including the suit land comprised in Survey No. 207 of Tirumangalam village. As the Tamil Nadu Housing Board framed the housing scheme by preparing a layout plan, it has also plotted out the lands in various blocks and plots with provision for roads, educational institutions, churches, mosques, temples, parks, etc., and the suit property in the layout was given Flat No. 2155 in "L" Block, Tamil Nadu Housing Board, Aringnar Anna Nagar Scheme. In view of the acquisition of the land in question under Section 4(1) notification followed by Section 6 declaration, awards were also passed in respect of all the land owners by paying compensation, as a result, the previous owners of the land in question lost their title in view of vesting of the land with the appropriate Government who have acquired the land. Therefore, after the acquisition proceedings were over with regard to the suit property, the civil Court has no jurisdiction to test the validity or legality of the notification issued under Section 4(1) or the declaration issued under Section 6 of the Land Acquisition Act, as per the ruling laid down by the Apex Court in State of Bihar Vs. Dharendra Kumar and others, . Inasmuch as the plaintiff attempted to question the validity of the acquisition proceedings by the Tamil Nadu Housing Board, the suit itself was not maintainable, it was pleaded.

3. Under this background, the trial Court framed the following issues:-

(i) Whether the plaintiff is entitled to the mandatory injunction against the first defendant to cancel the allotment order?

(ii) Whether the plaintiff is entitled to permanent injunction against the fourth and fifth defendants restraining them from sanctioning any building plan in favour of the second defendant?

(iii) Whether the suit is maintainable, as the pre-suit notice was not issued as per Section 138 of the Tamil Nadu Housing Board Act, 1961?

(iv) Whether the three prayers asked for by the plaintiff have become infructuous as claimed by the second defendant Mr. C.S. Balakrishnan?

(v) To what other relief the plaintiff is entitled to?

The trial Court, having tried both the suits together, decreed the suits as prayed for. Aggrieved by the said judgment, the second defendant filed Appeal Suit Nos. 379 and 380 of 2006. The first appellate Court, finding that the relief sought for in O.S. No. 188 of 1996 cannot be granted, allowed A.S. No. 379 of 2006 by setting aside the judgment and decree passed in O.S. No. 188 of 1996. However, in A.S. No. 380 of 2006 filed against the grant of permanent injunction restraining the defendant from interfering with the peaceful possession and enjoyment of the suit property, the first appellate Court has granted permanent injunction restraining the defendant and his men from interfering with the peaceful possession and enjoyment of the suit property by the plaintiff till he is evicted from the suit property under due process of law. Aggrieved by the judgment passed in S.A. No. 379 of 2006, the present second appeal has been filed.

4. This Court framed the following substantial questions of law for consideration:-

"(i) Whether the learned VII Additional Judge, City Civil Court, Chennai has committed a grave error in holding that the property covered under Ex. B13 as a subject matter of the acquisition under Exs. A12 to A14 contrary to the recitals in Ex. B13 which made a reference to the land acquisition under G.O.Ms. No. 950 Housing dated 13.08.1975?

(ii) Whether the learned Additional Judge erred in holding that Ex. B13 was with regard to the suit property based only on the schedule of property given in the sale deed without considering the source of title incorporated by the TNHB under Ex. B13?

(iii) Whether the plaintiff is entitled to the benefits of Sec. 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2003, in view of the concurrent finding of fact recorded by all the Courts with regard to his settled possession of the suit property?

(iv) Whether the judgment and decree of the learned first appellate Judge stand vitiated for the fact that the learned first appellate Judge had failed to frame points for consideration under Sec. 96 of C.P.C. and as per the dictum of the Hon"ble Supreme Court?

(v) Whether the suits filed by the plaintiff without issuing suit notice under Section 138 of the Tamil Nadu Housing Board Act are maintainable or not?"

5. Mrs. Chitra Sampath, learned senior counsel appearing for the plaintiff, while assailing the findings given by the first appellate Court, submitted that the

learned VII Additional Judge, City Civil Court, Chennai has committed a serious error in holding that the property covered under Ex. B13 dated 15.5.96 was the subject matter of acquisition under Ex. A12 dated 1.11.61, the notification under Section 4(1) and under Ex. A13 dated 17.11.65, the declaration under Section 6 of the Land Acquisition Act, contrary to the recitals in Ex. B13, when the name of the land owner/plaintiff was not even shown either in the Section 4(1) notification or in the Section 6 declaration and not even in the Award No. 4/67 dated 25.2.67. Continuing her arguments, she contended that if at all the allotment in favour of the second defendant was made on the basis of G.O.Ms. No. 950 dated 13.8.75, then the Government and the Tamil Nadu Housing Board should have specifically traced out the subject matter of the land under the Land Acquisition Act as to whom the property originally belonged to. When the plaintiff has claimed the suit property as his ancestral property and he derived the rights from his deceased father-Thirumani who was owning and possessing the same, the plaintiff being the absolute owner of the property covered in the survey number, even after the demise of his father in the year 1975, has been in peaceful possession and enjoyment of the same. His continuous physical possession of the suit property, even now, had been approved by the revenue authorities by issuing patta. Therefore, had the land covered in the survey number in question been acquired under the Ex. A12 notification dated 1.11.61 followed by the Ex. A13 declaration dated 17.11.65 and the award dated 25.2.67, and subsequently the Tamil Nadu Housing Board, after taking physical possession thereof, had handed over the same to the second defendant, the second defendant would have been in possession of the suit property. On the other hand, the plaintiff has been in physical possession. That shows that the suit land, which is the ancestral property of the plaintiff's family, was not the subject matter of the land acquisition proceedings. Therefore, the first appellate Court ought not to have disturbed the judgment of the trial Court, it was pleaded.

6. Learned counsel appearing for the first defendant-Tamil Nadu Housing Board, strongly opposing the maintainability of the suit itself, supported the impugned judgment. Drawing the attention of this Court to Section 138 of the Tamil Nadu Housing Board Act, the learned counsel contended that the suit originally filed by the plaintiff against the Tamil Nadu Housing Board seeking a decree for mandatory injunction against the Tamil Nadu Housing Board and to direct them to cancel the allotment order issued in favour of the second defendant-Mr. C.S. Balakrishnan in respect of the suit property and for permanent injunction against the Commissioner, Corporation of Chennai and the Chennai Metropolitan Development Authority restraining them from sanctioning any building plan in favour of the defendant, was not maintainable in law, for the sole reason that Section 138 of the Tamil Nadu Housing Board Act bars the institution of a suit without issuing the mandatory pre-suit notice sixty days prior to the institution of the suit. Adding further, the learned counsel explained that Section 138 of the Tamil Nadu Housing Board Act is more stringent than Section 80(2) of the Civil Procedure Code, in a way that under Section 80(2), the issuance of pre-suit

notice by the plaintiff before filing a suit against the Government can be dispensed with the permission of the Court on any urgent grounds. But under Section 138, there is no similar provision equivalent to Section 80(2) been provided, therefore, the issuance of pre-suit notice sixty days prior to the institution of the suit is a sine qua non. In the present case, when the suit was filed, the Tamil Nadu Housing Board filed a detailed written statement taking two solid grounds, one under Section 138 of the Tamil Nadu Housing Board Act that the suit filed by the plaintiff shall not be maintainable, as there was no pre-suit mandatory notice issued to the Tamil Nadu Housing Board sixty days prior to the institution of the suit. Secondly, the written statement also proceeded that the suit filed by the plaintiff was not maintainable by virtue of Section 88, which ousts the jurisdiction of the civil Court in respect of filing of suit against the order passed by the Government or the competent authority, as the same shall not be called in question in any Court and no injunction shall be granted by any Court. Although the Tamil Nadu Housing Board was proceeded ex parte, it was the obligated duty on the part of the trial Court to test the maintainability of the suit on the anvil of Section 138 read with Section 88 of the Tamil Nadu Housing Board Act. In support of his submissions, the learned counsel, placing reliance upon the judgment of the Apex Court in the case of Commissioner, Bangalore Development Authority Vs. K.S. Narayan, to say that when the property in question was already acquired and handed over to the Tamil Nadu Housing Board, the suit filed by the plaintiff asking for both mandatory injunction to cancel the allotment order issued by the Housing Board in favour of the second defendant and to grant permanent injunction restraining the fourth and fifth defendants in the suit from sanctioning the building plan in favour of the second defendant, was not maintainable for two reasons, namely, (i) that when the plaintiff had already filed W.P. No. 11624 of 1997 challenging the land acquisition proceedings issued under Section 4(1) of the Land Acquisition Act followed by the Section 6 declaration and to quash all the Government Orders insofar as Survey No. 207/13 part of Tirumangalam village and Patta No. 176 of West Madras Neighbourhood Scheme measuring an extent of 18 cents are concerned, this Court, by a detailed order dated 12.4.2002, while dismissing the said writ petition, clearly held that the plaintiff/writ petitioner had already filed one another Writ Petition No. 4190 of 1997 seeking a writ of mandamus forbearing the respondents, more particularly, the Secretary to Government, Housing Department, the Chairman, Tamil Nadu Housing Board, the Inspector of Police and the second defendant Mr. C.S. Balakrishnan from interfering with his peaceful possession of the suit property in Survey No. 207/13 part. Therefore, it was not open to the plaintiff to challenge the acquisition proceedings in a subsequent writ petition. Secondly, after the dismissal of the said writ petition, although liberty was given to the plaintiff to file a suit for identification of the suit property, without filing a suit for declaration of title of the suit property covered in Survey No. 207/13, has wrongly filed the suit for mandatory injunction, therefore, the suit filed for mandatory and permanent injunctions was not maintainable.

7. Mr. N.V. Nagasubramaniam, learned counsel appearing for the second defendant, joining hands with the learned counsel for the first defendant-Tamil Nadu Housing Board, submitted that though this issue was not answered by the first appellate Court, but, undoubtedly, it covers the plea taken by the second defendant in the written statement. That apart, the plea of maintainability of the suit is essentially a legal plea, as such, if the suit on the basis of it was not maintainable, the fact that no specific pleas were taken or no precise issues were framed is of little consequence. In support of his submissions, he has also relied upon the judgment of the Apex Court in State of Rajasthan Vs. Rao Raja Kalyan Singh, (Dead by his Lrs.), , wherein the Apex Court has held that under Order 6, Rule 2 of the Civil Procedure Code, the plea of non-maintainability of the suit being a legal plea, hence, the same can be accepted although no specific plea was taken or precise issue was framed.

8. It is at this point of time Mrs. Chitra Sampath, learned senior counsel for the plaintiff, in a rejoinder, replied that the first defendant-Tamil Nadu Housing Board, having taken a specific plea before the trial Court that the suit filed by the plaintiff without issuing pre-suit notice under Section 138 of the Tamil Nadu Housing Board Act shall not be maintainable, had not contested the suit and remained ex parte before the trial Court. Subsequently, before the first appellate Court also, the Tamil Nadu Housing Board did not even press this issue, therefore, what was not pleaded before the first appellate Court cannot be allowed to be taken before this Court, as the said plea is deemed to have been abandoned.

9. This Court is not able to find any merits or substance in the submissions made by Mrs. Chitra Sampath, learned senior counsel for the plaintiff. Before advertizing to the submissions of the learned senior counsel for the plaintiff on the other substantial questions of law, let me first consider the substantial question of law as to whether the suit filed by the plaintiff was maintainable or not. Admittedly, when the suit was filed by the plaintiff against the Chairman, Tamil Nadu Housing Board and Mr. C.S. Balakrishnan and others seeking a decree for mandatory injunction against the first defendant to direct them to cancel the allotment order issued in favour of the second defendant relating to the suit property and for permanent injunction against the fourth and fifth defendants, namely, the Commissioner, Corporation of Chennai and the Member Secretary, Chennai Metropolitan Development Authority from sanctioning any building plan in favour of the second defendant, without issuing notice as contemplated under Section 138 of the Tamil Nadu Housing Board Act, the first defendant-Tamil Nadu Housing Board filed a detailed written statement taking a vital plea that the suit filed against the Tamil Nadu Housing Board without issuing pre-suit notice sixty days prior to the institution of the suit was not maintainable, since the said provision is more stringent than Section 80(2) of the Civil Procedure Code. In this context, it is relevant to extract Section 138 of the Tamil Nadu Housing Board Act and Section 80(2) of the Civil Procedure Code, which read as follows:-

"138. Notice of Suit against Board etc. No suit shall be instituted against the Board, or any member, or any officer or servant of the Board, or any person acting under the direction of the Board, or of the Chairman or Managing Director of any officer or servant of the Board, in respect of any act done or intended to be done under this Act or any rule or regulation made there under until the expiration of sixty days next after written notice has been delivered or left at the Board's office or the place of abode of such officer, servant or person, stating the causes of action, the name and place of abode of the intending plaintiff, and the relief which he claims, and the plaint must contain a statement that such notice has been so delivered or left.

80(2). A suit to obtain an urgent or immediate relief against the Government or any public officer in respect of any act purporting to be done by such public officer in his official capacity, may be instituted, with the leave of the Court, without serving any notice as required by sub-section (1); but the Court shall not grant relief in the suit, whether interim or otherwise, except after giving to the Government or public officer, as the case may be, a reasonable opportunity of showing cause in respect of the relief prayed for in the suit:

Provided that the Court shall, if it is satisfied, after hearing the parties, that no urgent or immediate relief need be granted in the suit, return the plaint for presentation to it after complying with the requirements of sub-section (1)."

10. A careful reading of the above provision of Section 80(2) of Civil Procedure Code clearly shows that under Section 80(1), no suit shall be instituted against the Government or against a public officer in respect of any act said to have been done by such officer in his official capacity, until the expiration of two months next after notice in writing has been delivered. Sub-section (2) also says that a suit to obtain an urgent relief against the Government may be instituted with the leave of the Court without serving any notice as required under sub-section (1), but the Court shall not grant relief in the suit without giving notice to the Government or public officer, as the case may be, a reasonable opportunity of showing cause in respect of the relief prayed for in the suit. The proviso under this clause also says that if the Court is satisfied, after hearing the parties, that no urgent relief need be granted in the suit, shall return the plaint for presentation to it after complying with the requirements of sub-section (1). Therefore, if a suit is filed against the Government or against a public officer in respect of any act purportedly to be done by such public officer, in order to obtain urgent relief, without serving sixty days notice, it has been very clearly provided that no interim relief shall be granted. However, if the Court is satisfied that after hearing the parties that no urgent relief need be granted in the suit shall return the plaint for presentation to it after complying with the requirements of sub-section (1).

11. But under Section 138 of the Tamil Nadu Housing Board Act, no such provision like Section 80(2) has been provided to dispense with the issuance of pre-suit notice before filing of the suit even for getting any urgent relief.

Therefore, the issuance of notice as per Section 138 of the Tamil Nadu Housing Board Act is a sine qua non before filing the suit against the Tamil Nadu Housing Board. Since the plaintiff had filed the suit without issuance of notice as mandated under Section 138 of the Tamil Nadu Housing Board Act, in my considered view, the suit ought not to have been entertained. Indeed, the Tamil Nadu Housing Board, before the trial Court, has made it clear before the trial Court that the suit for mandatory injunction was not maintainable, as no pre-suit notice was issued as contemplated under Section 138. That apart, the written statement also specifically reminded the trial Court that no suit was not maintainable even under Section 88 of the Tamil Nadu Housing Board Act. Section 88 of the Tamil Nadu Housing Board Act says that no order made by the Government or the competent authority in exercise of any power conferred under the Chapter shall be called in question in any Court and no injunction shall be granted by any Court or any authority in respect of any action taken. But in the case on hand, when the plaintiff had filed the suit for mandatory injunction against the Tamil Nadu Housing Board directing them to cancel the allotment order issued to the second defendant, ironically, the plaintiff has not even mentioned the date of allotment order nor filed the copy of the allotment order. Be that as it may, even though the plaintiff had failed to mention the date of the allotment order and failed to produce the copy of the order, the jurisdiction of the civil Court to examine the correctness of the order of allotment has been completely ousted. In this context, it is more interesting to extract the suit prayer (a) made in the plaint, which reads thus:-

"(a) For mandatory injunction against the first defendant to direct them to cancel the allotment order issued in favour of second defendant relates to suit property."

12. The above prayer clearly shows that the plaintiff has not mentioned the date of the order of allotment. While so, he has not even produced the copy of the same, in which event Section 88 of the Tamil Nadu Housing Board Act stating that no order made by the competent authority in exercise of any power conferred under the Chapter shall be called in question in any Court and no injunction shall be granted in any Court in respect of any action taken in pursuance of any power conferred under the Chapter will squarely apply to this case. Ironically the trial Court, in spite of the objections raised by the second defendant on the non-maintainability of the suit, had decreed the suit which, in my considered opinion, is highly unjustified. As rightly contended by the learned counsel for the second defendant, the ratio laid down by the Apex Court in *State of Rajasthan Vs. Rao Raja Kalyan Singh, (Dead by his Lrs.)*, holding that the plea of non-maintainability of the suit being a legal plea can be accepted, although no specific plea was taken or precise issue framed, is squarely applicable to the present case. Besides, the plea of non-maintainability of the suit is essentially a legal plea, in the light of Section 138 read with Section 88 of the Tamil Nadu Housing Board Act, the suit filed by the plaintiff on the face of it is not at all maintainable. The fact that no specific plea was taken or no precise issue was framed is of little consequence. In view of the above, answering the last

substantial question of law against the plaintiff, the second appeal falls to ground.

13. Even otherwise, advertng to the arguments of the learned senior counsel for the plaintiff on the substantial questions of law 1 & 2 that the first appellate Court has committed a serious error in holding that the property covered under Ex. B13 was the subject matter of acquisition under Exs. A12 to A14, namely, the notification under Section 4(1) followed by the declaration under Section 6 as well as the award, contrary to the recitals in Ex. B13 and without considering the source of title are concerned, it was pleaded that when the plaintiff-Mr. T. Amuthan Anthony is claiming to be the owner of the land covered in Survey No. 207/13 part of Thirumangalam village after the demise of his father, his father's name viz., Mr. Thirumani should have been shown in the notification issued under Section 4(1) or the declaration under Section 6 of the Land Acquisition Act, therefore, the non-inclusion of the name of the plaintiff's father in the records clearly shows that the plaintiff's land in the said survey number was not the subject matter of acquisition proceedings. Moreover, the plaintiff has been in physical possession even after the issuance of patta by the revenue authorities, hence, the question of taking over of physical possession of the said land pursuant to the land acquisition proceedings does not arise. His physical possession and also the fact that the land covered in Survey No. 207/13 part was not the subject matter of land acquisition proceedings, having been properly and rightly considered by the trial Court, were failed to be appreciated by the first appellate Court. Moreover, originally the land in Survey No. 207/13 was having more than 8.86 acres. While so, the notification issued under Section 4(1) marked as Ex. A12 dated 1.11.61 and also the Section 6 declaration marked as Ex. A13 dated 17.11.65, also clearly show that the land acquired in the above said survey number was only 8.86 acres. Whereas the patta No. 176 issued for Survey No. 207/13 in the name of Mr. Thirumani, S/o. Vaithan on 15.6.74, 13 years after the Section 4(1) notification and the adangal extract issued for the year 1928 to 1963 showing the name of Mr. Thirumani for Survey No. 207/13 confirms the continuous possession of the plaintiff's father from 1928 to 1963, therefore, the trial Court has rightly held that a part of the land in Survey No. 207/13 was not acquired by the Government. Had it been acquired, the name of the plaintiff's father or the plaintiff's name would have been found in the Section 4(1) notification followed by the Section 6 declaration and the award. Admittedly, till date, no compensation has also been paid. That shows that the land of the plaintiff has not been acquired, therefore, without acquiring the plaintiff's land, no allotment order of the suit property should be issued in favour of the second defendant by the Tamil Nadu Housing Board.

14. Repelling the above arguments, Mr. N.V. Nagasubramaniam, learned counsel for the second defendant submitted that the plaintiff, by producing the adangal extract-Ex. A22 for the Fasli 1338-1373 viz., for year 1928 to 1963, wrongly claimed that he has been in possession of the suit property, as no adangal extract can be issued by the revenue authorities simultaneously for about 30 years in one document, since the revenue authorities have to every year issue

the adangal extract after seeing the nature of cultivation made by the land owner. Moreover, Ex. A22 and Ex. A24 showing the name of Mr. Thirumani for Survey No. 207/13 convey two different extent of land. In Ex. A22 marked by the plaintiff, the extent of the land was mentioned as 8.78 acres, whereas Ex. A24 issued on 14.3.2001 in the name of Mr. Thirumani for Survey No. 207/13 shows the extent of the land as 9.78 acres. Therefore, when the adangal extract Ex. A24 issued for the year 1963 mentions the extent of land in Survey No. 207/13 as having 9.78 acres; no explanation has been given by the plaintiff as to how another adangal extract Ex. A22 issued for the same survey number can have only 8.78 acres. On the other hand, the Section 6 declaration issued by the Tamil Nadu Government clearly mentions the name of Smt. N.L. Lalithambal as the only owner of the entire extent of 8.86 acres of land covered under the Survey No. 207/13. As rightly contended by the learned counsel for the first defendant, a perusal of the Section 6 declaration dated 17.11.65 under Ex. A13 clearly shows that the total extent of land covered in Survey No. 207/13 was only 8.86 acres, which belonged to Smt. N.L. Lalithambal, and the entire extent of land was acquired, for which Award No. 4/67 dated 25.2.67 was passed by paying the compensation to Smt. Lalithambal at Rs. 3,97,220.93p. Moreover, this could be confirmed from the admission made by the plaintiff in his plaint admitting that the Survey No. 207/13 was equivalent to Baimash No. 482. When the notification clearly says that the land in Baimash No. 482 equivalent to Survey No. 207/13 has been acquired, there was no more land left out, therefore, it is not open to the plaintiff to say that the suit land, which was not acquired by due process of law, should not be allotted to the second defendant.

15. This Court finds full force and merits in the above submissions. The suit land bearing Survey No. 207/13 was equivalent to Baimash No. 482 as per the admission made by the plaintiff himself in his plaint. Even if the admitted possession of the plaintiff that the suit land covered in Survey No. 207/13 being equivalent to Baimash No. 482 belonging to one Mr. Amavasai, S/o. Alavattan, who happens to be the brother of the plaintiff's grandfather, came to be partitioned between the brothers Mr. Amavasai and Mr. Vaitan, it was claimed that Mr. Vaitan acquired a right over 18 cents of land and also obtained patta for Survey No. 207/13 converted into Survey No. 207/13 part. Thereafter, it was further claimed that Mr. Thirumani, who is the son of Mr. Vaitan, was able to get transfer of patta passbook in the year 1972 and a patta was issued in the year 1974 in his name for the 18 cents of land. To disprove the said averments, the learned counsel for the second defendant produced before this Court the death certificate of Mr. Thirumani, S/o. Vaitan as 14.5.1970. When Mr. Thirumani died on 14.5.1970, the question of transfer of patta passbook in the year 1972 in the name of Mr. Thirumani appears to be an unbelievable story. Moreover, the challenge made by the plaintiff in Writ Petition No. 11624 of 1997 against the suit land covered in Survey No. 207/13 part, Tirumangalam village, Patta No. 176 of West Madras Neighbourhood Scheme measuring an extent of 18 cents, on the ground that the allotment of the said land in favour of the second defendant,

pursuant to the successful acquisition proceedings, was not maintainable, since the said land was not the subject matter of acquisition, was rejected by a detailed order dated 12.4.2003 by this Court, holding that the land acquisition proceedings were initiated in the year 1961 by publishing the notification under Section 4(1) of the Land Acquisition Act on 1.11.61 followed by the declaration under Section 6 of the Act on 17.11.65 and the passing of award on 25.2.67. Pursuant thereto, the Government also took possession of the land on 2.3.67 and after 23 years of taking possession, the Government by G.O.Ms. No. 1562, Housing and Urban Development Department dated 24.12.90 allotted the plot No. 2155 at Anna Nagar in favour of the second defendant. The Tamil Nadu Housing Board also, pursuant to the said allotment, made a provisional allotment order of the said plot in favour of the second defendant by another order dated 21.3.91 followed by the regular allotment order dated 3.5.91. In view of the above, the possession was also handed over to the second defendant by the Executive Engineer of Tamil Nadu Housing Board of Anna Nagar Division on 13.3.92 and the final sale deed was also executed on 15.5.96. Since the possession of the suit land was handed over to the second defendant as early as on 13.3.92, the possession as pleaded by the plaintiff was rejected by this Court in paragraph-9 of the order holding that the contention of the writ petitioner that he was in possession cannot be accepted. Moreover, while dismissing the said writ petition, this Court has held that it will not be open to the writ petitioner to once again challenge the land acquisition proceedings by a separate writ petition, since his previous Writ Petition No. 4190 of 1997 seeking for a writ of mandamus to forbear the respondents, more particularly, the Chairman, Tamil Nadu Housing Board and the second defendant from interfering with the peaceful possession of the writ petitioner over the properties in Survey No. 207/13 part of Tirumangalam village, Saidapet Taluk, Chennai was put against the writ petitioner. Without filing a suit for declaration, after the dismissal of the writ petition, the plaintiff ought not to have filed the suit for mandatory injunction. Accordingly, the substantial questions of law 1 & 2 are answered against the plaintiff.

16. Coming to the third substantial question of law whether the plaintiff is entitled to the benefit of section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2003 in view of the concurrent finding of fact recorded by all the Courts with regard to his settled possession of the suit property is concerned, Mrs. Chitra Sampath, learned senior counsel for the plaintiff further argued that as there has been a finding in favour of the plaintiff that he has been in physical possession of the suit property, as there was no compensation paid to the plaintiff's land, he is entitled to the benefit of Section 24(2). Repelling the submission, the learned counsel for the second defendant submitted that the plaintiff cannot assail the validity of the land acquisition proceedings in a civil suit, since the issue whether a civil suit is maintainable to challenge the acquisition proceedings is no longer res integra. In two decisions of the Apex Court, he pleaded, it has been clearly

held that the civil Court cannot go into the validity or otherwise of the notification issued under Section 4(1) or the declaration under Section 6 of the Land Acquisition Act.

17. Again I find some force in the submissions made by the learned counsel for the second defendant. As a matter of fact, the learned senior counsel for the plaintiff, from the beginning, has submitted before this Court that the plaintiff's land covered in Survey No. 207/13 part was not the subject matter of the acquisition proceedings, since the notification under Section 4(1), the declaration under Section 6 and the Award No. 4/67 dated 25.2.67 have not mentioned the name of the plaintiff's father or the plaintiff as the land owner nor any compensation was paid by the first defendant. When the consistent stand of the plaintiff shows that the land in question was not the subject matter of land acquisition proceedings, first of all, Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2003 cannot be made applicable, since the land owners covered under the notifications followed by the award alone are entitled to seek quashment of the land acquisition proceedings on the ground of non-payment of compensation due to passage of time if the award was passed five years ago. In the present case, when it has been seriously contended before this Court by the learned senior counsel for the plaintiff that the suit land was not acquired by the land acquisition proceedings, it is not known how Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act can be made applicable. Secondly, the plaintiff cannot challenge the acquisition proceedings by filing a civil suit. This question is no longer res integra. The Apex Court in the case of *Laxmi Chand and others Vs. Gram Panchayat, Kararia and others*, , has held as follows:-

"3. It would thus be clear that the scheme of the Act is complete in itself and thereby the jurisdiction of the Civil Court to take cognizance of the cases arising under the Act, by necessary implication, stood barred. The Civil Court thereby is devoid of jurisdiction to give declaration on the invalidity of the procedure contemplated under the Act. The only right an aggrieved person has is to approach the Constitutional Courts, viz., the High Court and the Supreme Court under their plenary power under Articles 226 and 136 respectively with self-imposed restriction on their exercise of extraordinary power. Barring thereof, there is no power to the Civil Court."

The aforesaid judgment was quoted with approval by the Apex Court in its subsequent judgment in *Commissioner, Bangalore Development Authority Vs. K.S. Narayan*, .

18. In a recent judgment of the Apex Court in *State of Punjab Vs. Amarjit Singh*, , while considering the question whether a Civil Court can entertain a suit involving challenge to the acquisition of land under the Land Acquisition Act, it has been held that by necessary implication, the power of the Civil Court to take cognizance of the case under Section 9 of the Civil Procedure Code stands

excluded and a Civil Court has no jurisdiction to go into the question of validity or legality of the notification issued under Section 4 of the Act and declaration made under Section 6 of the Act except by the High Court in a proceeding under Article 226 of the Constitution of India so the civil suit itself was not maintainable.

19. In view of the above, the substantial questions of law 3 & 4 are also answered against the plaintiff. For all the aforesaid reasons and conclusions, the second appeal fails and it is dismissed. However, there is no order as to costs.