

(2012) 01 MAD CK 0134

In the Madras High Court

Case No : Writ Appeal No's. 805 and 806 of 2011

The Administrative Officer, Special Project Division (K.K. Nagar) Tamil Nadu Housing Board, II Floor (Rear Wing), T.N.H.B. Complex, Ashok Nagar, Chennai-83 and The Managing Director, Tamil Nadu Housing Board, Nandanam, Chennai-35

APPELLANT

Vs

V. Chandrasekaran, Saraswathi Chandrasekaran (Rep. by her Power of Attorney Agent the first respondent), The Special Tahsildar (Land Acquisition), Unit-V, Tamil Nadu Housing Board Scheme, Nandanam, Chennai-35 and The State of Tamil Nadu

RESPONDENT

Date of Decision : 24-01-2012

Acts Referred:

Constitution of India, 1950 — Article 300A, 32

Land Acquisition Act, 1894 — Section 16, 17, 23(1), 4, 4(1)

Citation : (2012) 01 MAD CK 0134

Hon'ble Judges : M.Y. Eqbal, C.J;T.S. Sivagnanam, J

Bench : Division Bench

Advocate : S. Gomathi Nayagam,A.A.G. Assisted by Mr. C. Kasi Rajan, for the Appellant; Altaf Ahmed, for Mr. T.T. Ravichandran for Caveator, for the Respondent

Final Decision : Dismissed

Judgement

Honourable M.Y. Eqbal, Chief Justice and T.S. Sivagnanam, J.—These appeals are directed against the common order dated 01.11.2010

passed by the learned single Judge in Writ Petition Nos. 6108 and 20896 of 2009 filed by the appellants herein.

2. The writ petitions related to the land acquisition proceedings initiated for the formation of Tambaram Neighbourhood Housing Scheme vide the

notification issued u/s 4(1) of the Land Acquisition Act in G.O. Ms. No. 826 dated 15.5.1978 pertaining to the lands situated in Survey Nos.

282/1, 282/2, 282/3, 283/1, 283/2, 283/3, 284/1, 284/2, 284/3 and 284/4 of Tambaram Village, Saidapet Taluk, Chengalpet District. Out of the total extent sought to be acquired, 0.57 acres was deleted and the Declaration u/s 6 of the Act was published in respect of the lands to an extent of 58.02 acres. After the Declaration u/s 6 made on 6.6.1981, few of the land owners challenged the notification u/s 4(1) and the declaration u/s 6 in batch of writ petitions in W.P. No. 8895 of 1983 on the ground that the land owners have not been given opportunity to submit their explanation and also that Rule 3(b) was not complied with. That batch of writ petitions was disposed of by common order dated 16.12.1983, whereby the learned single judge quashed the declaration u/s 6 on the ground that there is serious flaw in not conducting the enquiry on the objections raised by the land owners, not getting the remarks of the Housing Board as contemplated under Rule 3(b) and such non-compliance of the procedure vitiates subsequent the declaration u/s 6. The learned single judge consequently upheld the notification u/s 4(1) of the Act and gave liberty to the Government to initiate fresh acquisition proceedings, if so desired.

3. As against the order passed by the learned Single Judge rejecting the claim of the writ petitioners for quashing the notification u/s 4(1), the writ petitioners preferred a batch of writ appeals in W.A. Nos. 215 to 222, 1435 of 1984. A Division Bench of this Court, by judgment 23.8.1985, allowed the appeals and set aside the notification u/s 4(1) insofar as the lands of the writ petitioners were concerned on the ground that the notification u/s 4(1) was published in the Gazette on 7.6.1978, but the publication in the locality was made only on 19.12.1978, which was more than six months later. The Division Bench observed that in view of the declaration u/s 6 having been quashed by the learned single Judge and the Government having not filed any appeal, that order had become final. As against that judgment of the Division Bench, the Government and the Housing Board preferred SLP Nos. 7277 to 7289 of 1989 before the Supreme Court and the Apex Court, by order dated 6.5.1992, dismissed the SLPs by confirming the order passed by the learned single Judge and not only quashed the declaration u/s 6 and the subsequent proceedings, but also quashed the notification u/s 4(1) of the Act in so far as the lands belonging to the writ petitioners are concerned.

4. Thereafter, the second batch of writ petitions in W.P. Nos. 7645 of 1985 and 2167 of 1986 was filed by different land owners seeking to

quash the notification u/s 4(1) of the Act, which were allowed in view of the earlier orders passed in the batch of writ petitions, thereby quashing

Section 4(1) notification and subsequent proceedings in so far as the land of the petitioners therein were concerned. The Government did not issue

any fresh notification u/s 4(1) either in respect of the lands in respect of which Section 4(1) notification was earlier quashed or in respect of the

entire remaining lands covered under the earlier Section 6 declaration and the subsequent proceedings. However, proceedings were initiated for

determining the compensation for the remaining lands; the award proceedings was completed on 1983 and compensation was also received by the

erstwhile land owners. But, the actual possession continued to be with the land owners.

5. As far as the writ petitioners are concerned, they became owners of the subject lands through different sale deeds executed during 2004-05.

Both prior to and subsequent to their purchase, the petitioners and a few other land owners covered under the acquisition proceedings sought

certain clarifications as to whether any acquisition proceedings are pending in respect of the survey numbers in question, including in respect of the

lands in question herein. The Special Tahsildar, TNHB scheme, who is the competent authority in so far as the acquisition proceedings is

concerned, categorically stated that no acquisition proceedings are pending in respect of those lands and no fresh proceedings will be initiated.

Only after making due enquiry and after getting satisfied that no acquisition proceedings are pending in respect of the lands in question, the writ

petitioners purchased the property for valuable consideration and applied for planning permission and also obtained planning approval from all

other authorities concerned and entered into development agreement with the reputed builder viz., M/s. Doshi Estates, Chennai to put up a

residential apartment complex and also through power of attorney agent, proceeded with the construction of residential flats after obtaining building

construction permission from local authorities and transfer of patta from the Deputy Tahsildar, Tambaram. Thereafter, there was an attempt on the

part of the Housing Board to put up sign board as if the lands belong to them, which compelled the writ petitioners to take due action, after which

the authorities concerned removed the name board. In the mean while, the erstwhile land owners and other land owners also sought for re-

conveyance of the property on the ground that the Section 4(1) notification in respect of a portion of the lands in the survey numbers in question

and the Section 6 declaration in entirety were quashed and there was no further proceedings and hence, the acquisition proceedings initiated earlier

had lapsed. The writ petitioners, who are the subsequent purchasers, also filed an application before Chairman, High level committee, TNHB for

re-conveyance and issuance of NOC. While the representation made for re-conveyance by the erstwhile land owners and others was ordered in

favour of some of the land owners, it was rejected in respect of some of the land owners, including the erstwhile land owners. Therefore, the writ

petitioners challenged such rejection in W.P. No. 20896 of 2009 in the capacity as the subsequent owners of the property.

6. The writ petitioners also made a representation dated 30.3.2009 to the Chairman of High level committee for re-conveying the land and

issuance of NOC. The said request was also recommended by the Executive Engineer, TNHB and the High Level Committee, TNHB stating that

as the batch of earlier writ petitions against the acquisition proceedings were decided against the department and no appeal was preferred

questioning the same and since 23 years have lapsed, filing of appeals is not possible at this stage and though possession of some of the lands was

handed over to TNHB, there is no approach road to the above lands and hence, the above lands could not be utilised. Since there is no access to

the above lands, the same cannot be utilised for any purpose by TNHB and the lands may, therefore, be released to the writ petitioners on

payment of the compensation amount received by the land owners coupled with the land acquisition charges and development charges, if any.

However, as there was no further progress in this regard, the writ petitioners filed W.P. No. 6108 of 2009 for declaring the Section 4(1)

notification issued by the Government in respect of the lands belonging to the writ petitioners as lapsed, abated and inoperative and to

consequently forbear the respondents from in any manner interfering with the peaceful enjoyment/development of the properties belonging to the

petitioners.

7. The learned single Judge, in the detailed order passed in the writ petitions, which is impugned in the present appeals observed that though the acquisition proceedings initiated in 1978 by issuance of 4(1) notification was quashed in respect of some of the lands and the Section 6 declaration and further acquisition proceedings was also quashed as early as in 1983, the Government, without passing valid Section 6 declaration, as required under law, proceeded to pass the compensation award and also paid the compensation to the land owners. It was observed that in the absence of valid fresh Section 6 declaration, the question of passing any award does not at all arise and therefore, the award passed in respect of the lands in question has to be necessarily held a nullity in the eye of law and that consequently renders the vesting of the lands in question with the Government and the TNHB invalid, as they cannot deny the right of the owners of the land for re-conveyance. Inasmuch as the award was passed without following the procedure, the same does not have the effect of depriving the writ petitioners of their right to challenge the acquisition proceedings. It was observed that Section 6 declaration cannot be made after expiry of one year from the date of publication of the notice and no award can be passed after two years from the date of Section 6 declaration and the failure to issue Section 6 declaration and to pass award within the time specified in the Act resulted in the entire acquisition proceedings getting lapsed and no further acquisition proceeding can be taken in respect of the lands belonging to the writ petitioners, notwithstanding the fact that Section 4(1) notification in respect of the lands of the writ petitioners was not quashed by the court.

8. The learned single Judge further observed that a major portion of the lands covered under acquisition proceedings is already re-conveyed to the respective land owners. The authorities concerned have also repeatedly stated in their reply to the representation of the writ petitioners that no land acquisition proceedings is pending in respect of the lands in survey numbers in question. The High level committee, TNHB and the Executive Engineer, TNHB have also categorically stated in their recommendations that as the lands cannot be utilised for any other purpose by the Housing Board and as nothing is done so far in so far as the other lands are concerned, the same may be re-conveyed to the land owners subject to the

return of the compensation and other statutory charges, if any received by them. The learned single Judge held that in view of the letter in Ms. No.

397/L.A.3(2)/07-4 dated 18.12.2007 issued by the Secretary to Government, Housing and Urban Development Department, Chennai-9 to one

K. Palaniammal, whose lands also covered under land acquisition proceedings in Kalapatty village, Coimbatore District, wherein the Housing

Board was directed to re-convey the land to Palaniammal who is the subsequent purchaser of the property, the writ petitioners, though being the

subsequent purchasers of the lands in question, have every right to maintain the writ petitions and to claim re-conveyance of the lands in question.

9. The learned single Judge therefore held that in view of such factual position, as referred to above that the acquired lands can no longer be

utilised and is not contemplated for utilisation in any other manner either by the government or by the Housing Board, the recommendations made

by the High level committee, TNHB who is the competent authority, is to be necessarily accepted by the government and by Housing Board by

duly reconveying the property to the petitioners. Further, the writ petitioners have also on the strength of the reply issued by the authority

concerned, made considerable development after obtaining necessary planning permission from the competent local and other authorities and by

entering into development agreement in respect of the property with third party and incurred huge expenditure. This was done only in pursuance of

the communications received from the competent authority that no land acquisition proceedings is pending in respect of the lands in question. That

being so, the authorities are now estopped from opposing the claim of the petitioners for reconveyance. Thus, the learned single Judge held the

acquisition proceedings u/s 4(1) notification in respect of the lands in survey numbers in question as lapsed and abated and consequently, the order

of the fourth respondent rejecting the claim of re-conveyance which is the subject matter of W.P. No. 20896 of 2009 was held liable to be

quashed.

10. Accordingly, the learned single Judge declared Section 4(1) notification issued by the fourth respondent in G.O.Ms. No. 826 dated 15.5.1978

in respect of the lands in survey numbers in question as lapsed, abated and inoperative and the letter issued by the fourth respondent in Letter No.

2899/LAI(1)/2007-6 dated 7.7.2008 was quashed as illegal and without jurisdiction. The fourth respondent was consequently directed to order

re-conveyance of the lands in question to the writ petitioners subject to the condition that the writ petitioners deposited the compensation received

by the original land owners along with other charges such as land acquisition charges and development charges etc., as contemplated under law,

with interest at 15% p.a. from the date of payment till date of deposit within four weeks from the date of receipt of the copy of this order. The

respondents were accordingly directed to order re-conveyance of the lands in question to the writ petitioners within six weeks thereafter. The

respondents were further directed not to interfere with the peaceful possession, enjoyment and development activities carried on by the writ

petitioner in the subject lands.

11. W.P. No. 6108 of 2009 was filed by the petitioner/respondent for a declaration that Section 4(1) notification dated 15.05.1978 pertaining to

the lands situate at Survey Nos. 282/1, 282/2, 283/1, 213, 284/1, 2, 3 & 4 and 166 of Tambaram Village, Old State Bank Colony, Chennai -45

has become lapsed and inoperative, and consequently, to restrain the respondents from interfering with the peaceful enjoyment of the said lands by

him.

12. W.P. No. 20896 of 2009 was filed by the same writ petitioner/respondent for quashing the letter dated 07.07.2005 and directing the

respondents to re-convey the property being S. Nos. 283/1, 284/1, 284/2 and 284/3 of Tambaram Village.

13. In the year 1983 a batch of writ petitions were filed being W.P. Nos. 8895, 8897 to 8899, 9049 to 9052, 9091 to 9093, 9142 and 9144 of

1983 challenging the notification issued u/s 4(1) vide., G.O.Ms. No. 826 dated 15.05.1978 and also Section 6 declaration made on 06.06.1981

in respect of the following lands belonging to the petitioners therein.

Sl.No. Writ Petition No. Survey Numbers of the Land

1. 8895 of 1983 250/3 and 250/1

2. 8897 of 1983 284/4, 284/2C and 254/1

3. 8898 of 1983 277

4. 8899 of 1983 283/2 and 283/3

5. 9049 of 1983 285/2 and 285/4

6. 9050 of 1983 252

7. 9051 of 1983 250/4, 285/1

8. 9052 of 1983 282/3B

9. 9091 of 1983 275/2B, 278/1A

278/2A, 278/2B, 278/2C, 278/2D and

10. 9092 of 1983

278/2E

11. 9093 of 1983 286/1 and 286/3A

12. 9142 of 1983 255/2, 253/3, 255/1

13. 9144 of 1983 282/3A, 287/1, 287/3 and 288/1

14. In terms of the order dated 16.12.1983 the writ petitions were allowed in part quashing Section 6 declaration, but, however, Section 4(1)

notification remained stand good.

15. The writ petitioners in the aforesaid batch of writ petitions being not satisfied with the order preferred appeals being W.A. Nos. 214 to 225

and 435 of 1984. By judgement dated 23.08.1985 the appeals were allowed and Section 4(1) notification was also quashed in so far as the lands

of the appellants therein are concerned.

16. From the above, it is clear that Section 4(1) notification and Section 6 declaration were quashed only in respect of the lands belonging to the

writ petitioners/appellants therein.

17. A second batch of writ petitions were also filed being W.P. Nos. 7645 of 1985, 2167, 9809, 9896, 11101, 11102, 11113 to 11115, 11118,

11119, 11400 to 11404, 11730, 11731, 12971, 12972 and 13956 of 1986. In those writ petitions the relief sought for by the writ petitioners are

as under:-

Sl.No. Writ Petition No.Survey Number of the Prayer

Land

1. 7645/1985 286/2 and 288/2 To quash Section 4(1)

notification and Section 6

declaration.

2. 2167/1986 282/1 and 282/2 -do-
3. 9809/1986 291 To withdraw the land in question from acquisition notified u/s 6 of the Act vide G.O.Ms.No.389 dated 6.6.1981.
4. 9896/1986 291 To quash Section 4(1) notification, Section 6 declaration and the consequent Award.
5. 11101/1986 291 -do-
6. 11102/1986 291 -do-
7. 11113/1986 291 -do-
8. 11114/1986 291 -do-
9. 11115/1986 291 -do-
10. 11118/1986 131/1/A1/A1 To quash Section 4(1) notification.
11. 11119/1986 131/2/A1-A3 -do-
12. 11400/1986 292/1A/1A/1A To quash Section 4(1) notification, Section 6 declaration and the consequent Award.
13. 11401/1986 392/1A/1A -do-
14. 11402/1986 292/1A/1A -do-
15. 11403/1986 292/1A/1A/1C -do-
16. 11404/1986 292/1A/1B -do-
17. 11730/1986 233/4 -do-
18. 11731/1986 233/4B and 122/2B -do-
19. 12971/1986 291 -do-
20. 12972/1986 291 -do-

21. 13956/1986 291 To quash Section 4(1)

notification and Section 6

declaration.

18. The abvoe writ petitions were allowed following the judgment rendered in W.A. No. 214 to 225 and 435 of 1984. The order reads as

follows:-

ORDER

It is not in dispute that the judgment of a Division Bench of this Court in G. Nandakumar Vs. State of Tamil Nadu (W.A. Nos. 214 to 225 and

435 of 1984 -Judgment dated 20.03.1985) will squarely apply to these cases and on that basis, the writ petitions will have to be allowed. Learned

Government Advocate (Land Acquisition) states that the petitioners have not come to this Court earlier and on that ground, they must not be given

the relief, based on the judgment of the Division Bench. However, the fact remains that the Division Bench has quahsed the very same notification

u/s 4(1) of the Land Acquisition Act on the ground that there was a delay of six months in publishing the substance of the notification u/s 4(1).

Simply on the ground that the petitioners have come to this court after the decision of the Division Bench, they cannot be refused the relief in these

cases. Applying the judgment of the Division Bench, these writ petitions are allowed. No costs.

19. From the aforesaid orders and judgment passed in the two batches of writ petitions and also in a batch of writ appeals, it is very clear that

Section 4(1) notification and Section 6 declaration were quashed only insofar as the lands of the writ petitioners in those batches of cases and not

in respect of the entire lands sought to be acquisitioned.

20. Curiously enough, the second relief for quashing the award dated 14.08.1986 was neither passed nor the award was quashed. It is also clear

that indisputably the relief sought for by the petitioners in the instant writ petitions for re-conveying their lands in S. Nos. 283/1, 284/1, 284/2 and

284/3 were not the subject matter of the earlier writ petitions. In other words, Section 4(1) notification and Section 6 declaration insofar as these

lands are concerned or the award in respect of these lands have not been quashed.

21. The respondents/State contested the instant writ petition by filing a detailed counter affidavit. The case of the respondents is that the lands comprised in Survey Nos. 283/1, 284/1, 284/3 and 284/2 measuring 0.27, 0.70, 0.64 and 0.65 acres respectively in Tambaram Village & Taluk, Kancheepuram District was sought to be acquired under the Act for implementation of the Tambaram Neighbourhood Scheme. The notification u/s 4(1) of the Act was issued, followed by the declaration under Sections 6 and 7, and after an award was passed for the aforesaid lands, possession thereof was also taken over by the Housing Board as far back as in the year 1983 and 1986 and since the lands vest solely with the Housing Board, the writ petitioners cannot claim re-conveyance of the lands and therefore, the writ petitions were not maintainable. According to the respondents, though a batch of writ petitions in W.P. No. 9142 of 1983 were allowed by this Court, quashing the declaration issued u/s 6 of the Act, the notification issued u/s 4(1) was not interfered with, but it was quashed by the Division Bench in the writ appeals filed by the land owners on the ground of delay in publication thereof in the locality and the SLP preferred by the State was also dismissed. It is the case of the respondents that the subject lands, viz. Survey Nos. 283/1, 284/1, 284/2 and 284/3 were not covered either in the above batch of writ petitions, i.e. W.P. No. 9142 of 1983 etc. or in the other batch referred to by the writ petitioners, i.e. W.P. No. 7645 of 1996 and therefore, none of the orders passed in either of the aforesaid writ petitions were applicable to these lands. Therefore, the writ petitioners, who are subsequent purchasers, cannot insist for re-conveyance of the lands in question or for any other relief, since the subject lands absolutely vest with the Tamil Nadu Housing Board, the award having also been passed in respect thereof. The Government was, therefore, right in rejecting the request for re-conveyance of the lands as the writ petitioners were not entitled to any relief under Article 300-A of the Constitution. The construction put up by the writ petitioners was deemed to be an illegal encroachment and hence, action was taken to remove the illegal encroachments and unauthorised construction put up on the subject lands and also to cancel the planning permission. It was further stated that the decisions of the Supreme Court in Keeravane Ammal and L. Chandrasekaran were supporting the stand of the Government in that it was held therein that after an award is passed

and possession of the land is taken over, the relief u/s 48-B is not a matter of right and hence, the writ petitioners are not entitled to claim relief

under the doctrine of legitimate expectation.

22. The learned Additional Advocate General would contend that the writ petitions itself were not maintainable after the award was passed in

respect of the lands in survey Nos. 283/1 and 284/1, 2 and 3 in Award No. 14/83 was passed on 28.06.1983 and Award No. 11/86, dated

14.08.1986, respectively. Therefore, it is contended that the learned Single Judge ought to have dismissed the writ petitions as not maintainable.

Further, it is contended that the writ petitioners, who are subsequent purchasers, having stated to have purchased the land in question after the

award was passed, have absolutely no right to seek for re-conveyance u/s 48(B) of the Act. Further, it is submitted that the procedure prescribed

under the Act was scrupulously followed in the instant case and possession of the lands have been taken over and the lands are required by the

Housing Board for the public purpose and therefore, the learned Single Judge erred in directing re-conveyance and also by directing that the

possession and enjoyment of the respondents/writ petitioners should not be interfered with.

23. Further, it is submitted that the decision of this Court in W.P. No. 8895 of 1983, etc., batch and the judgment in W.A. Nos. 214 to 225 of

1994 and the judgment of the Supreme Court in SLP Nos. 7277 of 1989 will not in any manner support the case of the respondents/writ

petitioners, since neither they were parties to the batch of cases nor the lands bearing survey Nos. 283/1 and 284/1, 2, 3 were subject matter of

those cases and therefore, the relief granted in those proceedings will not have any effect on the said lands, in which the land acquisition

proceedings have reached finality and awards have already been passed. It is further contended that the erstwhile land owners had approached the

Government, by submitting a representation on 13.11.2006, seeking re-conveyance, which application was directed to be disposed of, by an

order passed in W.P. Nos. 16989 to 16992 of 2007, dated 12.12.2007, pursuant to which, the order dated 07.07.2008, was passed by the

Government, rejecting the request for re-conveyance. Admittedly, the said communication was addressed to the erstwhile land owner, who had

filed the said petition and who had also filed writ petition to dispose of such petitions. Therefore, the present writ petitioners, who were subsequent purchasers cannot maintain the present writ petition, challenging the communication dated 07.07.2008.

24. The learned counsel placed reliance on the decision of the Hon''ble Supreme Court in Babu Barkya Thakur Vs. The State of Bombay and

Others, , in support of his contention that a notification u/s 4(1) of the Act will not lapse. Further, the learned counsel relied on the decision of the

Supreme Court in U.P. Jal Nigam, Lucknow through its Chairman and another Vs. M/s. Kalra Properties (P) Ltd. Lucknow and others, , for the

proposition that a subsequent purchaser has no right and locus-standi, to challenge the notification issued u/s 4(1) of the Act. The learned counsel

further pointed out that the document/communication relied on by the respondents/writ petitioners which is stated to have written by the Assistant

Secretary of the Housing Board, is a forged document and the respondents have created false records in order to secure planning permission. The

learned counsel relied upon a letter dated 22.12.2009, written by the Managing Director of the Housing Board to the Member Secretary, CMDA,

wherein, it has been stated that the letter dated 07.07.2005, said to have been issued by the Assistant Secretary (LA), TNHB, stating that there is

no land acquisition proceedings pending in respect of Survey Nos. 283/1, 284/1, 284/2, 284/3 and 289/1, is wrong and the three letters were

never officially issued from the office, as the said proceedings of the Assistant Secretary, were cancelled. However, xerox copy of the same have

somehow been obtained from the office by the writ petitioners and submitted to CMDA. Further, in the said letter dated 22.12.2009, it was stated

that no NOC was issued for the said survey numbers and the writ petitioners have no right to get planning permit, therefore, it was requested to

immediately arrange for stoppage of construction in the said land. Further it was stated that the property in survey No. 284/2 stands registered in

the name of the Housing Board in the Town Survey records. Based on such communication, the CMDA informed the Housing Board, by letter

dated 11.03.2010, stating that show cause notice has been issued for cancellation of the planning permit. Further, the learned counsel submitted

that the Tahsildar, Tambaram, by proceedings dated 26.03.2010, informed the Board that the lands in the said survey numbers stood transferred

in the name of the Housing Board in the Revenue records. Therefore, it is submitted by the learned counsel that the respondents/writ petitioners

who have said to have purchased the property during 2004-05, are attempting to unsettle settled matters, when awards have been passed way

back in 1983/1986. That apart, the respondents have played fraud presumably with collusion of some insiders and therefore, they are not entitled

for any indulgence and the order and direction issued by the learned Single Judge, calls for interference.

25. Per contra, the learned Senior counsel appearing for the respondents submitted that the request for re-conveyance was examined by a High

Level Committee appointed by the Tamil Nadu Housing Board and their recommendation dated 16.06.2009/30.06.2009 was that the lands in

survey Nos. 283/1, 284/1, 284/2 and 284/3, though were taken possession by the Board, the Executing Engineer has stated that there is no

approach road to the land and the Board may not be in a position to utilise the above lands and they may be released to the writ petitioners on

collection of compensation amount received by the land owner, land acquisition charges and development charges. Therefore, the learned counsel

submitted that the said decision is binding upon the Board and the High Level Committee having recorded that there is no access to the property,

the writ appeal itself at the instance of the Board is not maintainable. Further, it is submitted that for all these years, the Board did not take any

steps to acquire lands for the purpose of providing access to the property. The learned counsel further submitted that in view of the earlier decision

of this Court in W.P. No. 8895 of 1983 etc., batch, dated 16.12.1983, and the judgment of the Division Bench in W.A. No. 214 to 225 of 1984,

dated 23.08.1985, the lands never vested with the Government/the Board and the acquisition itself had lapsed. Thus, in the absence of vesting, the

question of locus-standi of the writ petitioners, who are subsequent purchasers, is of no consequence. The learned Senior counsel by placing

reliance on a proceeding issued by one Mr. K. Muthu, Special Tahsildar (LA), Unit V, Tamil Nadu Housing Board Schemes, Chennai -35 in R.C.

No. 8222/95/F5, dated 12.05.2006, addressed to the Assistant Secretary (LA1), Tamil Nadu Housing Board, Chennai-35, copy of which has

been marked to Mr. V. Chandrasekaran, the writ petitioner, submitted that the said Special Tahsildar Mr. K. Muthu had clearly certified that the

entire acquisition proceedings have been vitiated and though the possession of the land was taken long back, it could not be utilised for the purpose

and the adjacent lands were excluded from the scheme or NOC issued by the Requisitioning body and so far as lands of the writ petitioners are

concerned i.e. Survey Nos. 282/1 and 282/2, no land acquisition proceeding is pending in their office. By placing heavy reliance on the said

proceeding, the learned Senior counsel submitted that the further proceedings such as issuance of planning permission etc., was justified and the

writ petitioners were entitled to the prayer sought for and granted by the learned Single Judge. With regard to the effect of lapsing of acquisition,

reliance was placed on the decision of the Supreme Court in *M/s. Girnar Traders vs. State of Maharashtra*, (2007) 6 Supreme 25.

26. We have elaborately heard Mr. S. Gomathi Nayagam, learned Additional Advocate General and Mr. Altaf Ahmed, learned Senior Counsel

appearing for the respondents/writ petitioners and carefully perused the materials available on record.

27. Apart from the factual issues an important legal issue, which is no longer *res integra*, arises for consideration in these appeals, namely, whether

an acquisition proceeding initiated under the provision of the Land Acquisition Act, by issuance of a notification u/s 4(1) of the Act, would lapse

and what are the rights of a purchaser, who purchased the land, which was subject matter of land acquisition proceedings after award was passed

determining the compensation payable for the acquisition.

28. In the case of *Babu Barkya Thakur Vs. The State of Bombay and Others*, the petition under Article 32 of the Constitution, impugned the

constitutionality of land acquisition proceedings with particular reference to the notification issued u/s 4 of the Act in respect of an area of land in

Maharashtra. The Supreme Court, while considering various questions, also considered the purpose and effect of a notification issued u/s 4 of the

Act. While considering the said question, the Supreme Court held as under:-

17.....The purpose of the notification u/s 4 is to carry on a preliminary investigation with a view to finding out after necessary survey and taking of

levels, and, if necessary, digging or boring into the sub-soil whether the land was adapted for the purpose for which it was sought to be acquired. It

is only u/s 6 that a firm declaration has to be made by Government that land

with proper description and area so as to be identifiable is needed for a public purpose or for a Company. What was a mere proposal u/s 4 becomes the subject-matter of a definite proceeding for acquisition under the Act. Hence, it is not correct to say that any defect in the notification u/s 4 is fatal to the validity of the proceedings, particularly when the acquisition is for a Company and the purpose has to be investigated u/s 5A or Section 40 necessarily after the notification u/s 4 of the Act.

29. In the light of the above decision, even assuming that there was a defect in the notification, the same cannot be fatal to the validity of the proceedings. Be that as it may, in the batch of cases, which was filed by certain land owners during 1983 in W.P. No. 8895 of 1983 etc., batch, the challenge was to the acquisition proceedings and the petitioners therein, sought for quashing the notification issued u/s 4(1) of the Act and the declaration u/s 6 of the Act. The Hon"ble Mr. Justice S. Mohan, as he then was, allowed the writ petition in part, by quashing the declaration u/s 6 and leaving the notification u/s 4(1) intact. The operative portion of the order reads as hereunder:

5. However, I find as regards the second print the procedure under Rule 3(b) not having been complied with the petitioners are entitled to succeed. The section 5-A enquiry took place on 10.1.1979. It was before, that the objections of the petitioner were forwarded to the Housing Board. The Housing Board has submitted its remarks on 10.03.1980, long after the enquiry. What is the good of it. The petitioners are entitled to know as to how exactly their objections are dealt with by the Housing Board. There is no such thing here. There was no enquiry after receipt of the objections. Section 5-A enquiry, is not an empty formality or a mere ritual. It affords valuable right to the owners of the land to put forth their objections. Considered from this point of view, the procedure is not making the petitioners know of the remarks of the Housing Board and not conducting the enquiry on the objections as well the remarks of the Housing Board vitiates Rule 3(b), in view of the serious flaw, the writ petition will stand allowed, quashing the declaration u/s 6, in other words, the Section 4(1) notification will alone stand. If the Government are desirous, they could take fresh acquisition proceedings from the stage of Section 4(1). The petitioners are entitled to costs. Counsel fee Rs. 250/- in each

case.

30. The aggrieved writ petitioners filed a batch of appeals in W.A. No. 214 to 225 of 1984, etc., which were heard and disposed of by the

Division Bench, by judgment dated 23.08.1985. The Division Bench allowed the appeals and set aside the notification u/s 4(1) of the Act also

insofar as the lands of the appellants are concerned (emphasis supplied). Admittedly, the writ petitioners' vendors were not parties to the said

batch of cases and the acquisition proceedings in respect of the lands which are covered in these appeals, were not subject matter of the earlier

round of litigation. Subsequently, the other land owners, who were aggrieved by the land acquisition proceedings filed batch of cases, in W.P. No.

7645 of 1985, etc batch, even in the said batch of cases, the vendors of the writ petitioners were not parties. The said writ petitions were allowed,

by following the decision of the Division Bench referred supra. Another set of land owners filed W.P. No. 11578 of 2003, etc., batch, challenging

the acquisition proceedings, which was allowed, by order dated 23.09.2004, following the decision of the Division Bench. Even in the second

batch of writ petitions, the vendors of the writ petitioners herein, were not parties.

31. It is not in dispute that the award in respect of the lands in question were published in Award No. 14 of 1983, dated 28.06.1983, and Award

No. 11/1986, dated 14.08.1986. After nearly 20 years, the vendors of the writ petitioners herein approached the Government, by filing a

representation dated 13.11.2006, wherein they prayed for dropping the land acquisition proceedings. It is to be noted that even much prior to the

filing of the representation, the erstwhile land owner had sold the property in favour of the writ petitioners herein, by sale deeds executed on

different dates during 2004-05. The representation was not considered by the Government, therefore, the erstwhile land owners filed writ petitions

in W.P. No. 16989 to 16992 of 2007. The relief sought for in the said writ petitions was to direct the State Government to consider their petition

dated 13.11.2006 and drop the land acquisition proceedings, in the light of the judgment in W.P. No. 8895 of 1983 etc., and W.A. No. 214 of

2004 etc., and S.L.P.(C). 7277 of 1986, etc. Thus, an attempt has been made to indirectly challenge the land acquisition proceedings. Curiously

enough the Housing Board was not made a party to the writ petitions. A direction was issued by this Court on 12.12.2007, to dispose of the

petition dated 13.11.2006 and necessary further action may be initiated to re-convey the lands to the petitioners. Pursuant to such direction, the

Government passed an order on 07.07.2008, rejecting the request for re-conveyance and stating that the award has already been passed and

possession has been taken over and the lands are essentially required to form the "Tambaram Neighbourhood Scheme". This order dated

07.07.2008, was addressed to the vendors of the present writ petitioners. Curiously enough the writ petitioners herein, challenged the said

communication, by filing the writ petitions in W.P. No. 20896 of 2009, and another writ petition in W.P. No. 6108 of 2009, challenging u/s 4(1)

notification as having lapsed and become in-operative. The orders passed in the said writ petitions are subject matter of the present appeals.

32. Admittedly, the writ petitioners herein are said to have purchased the lands in question from the erstwhile land owners and the fact that the

purchase was effected after the award was passed, has not been controverted. The Supreme Court in the case of U.P. Jal Nigam, Lucknow

through its Chairman and another Vs. M/s. Kalra Properties (P) Ltd. Lucknow and others,] considered the rights and locus-standi of purchaser of

land after the publication of notification u/s 4(1) of the Act and held as follows:

3....It is settled law that after the notification u/s 4(1) is published in the Gazette any encumbrance created by the owner does not bind the

Government and the purchaser does not acquire any title to the property.

..... That apart, since M/s Kalra Properties, respondent had purchased the land after the notification u/s 4(1) was published, its sale is void against

the State and it acquired no right, title or interest in the land. Consequently, it is settled law that it cannot challenge the validity of the notification or

the regularity in taking possession of the land before publication of the declaration u/s 6 was published.

4. The next question is: whether the respondent is entitled to compensation and, if so, from what date and at what rate? The original owner has the

right to the compensation u/s 23(1) of the Act. Consequently, though the respondent acquired no title to the land, at best he would be entitled to

step into the shoes of the owner and claim payment of the compensation, but

according to the provisions of the Act. It is settled law that the price prevailing as on the date of the publication of the notification u/s 4(1) is the price to which the owner or person who has an interest in the land is entitled to. Therefore, the purchaser as a person interested in the compensation, since he steps into the shoes of erstwhile owner, is entitled to claim compensation.

33. In the case of State of Kerala and others Vs. M. Bhaskaran Pillai and another, the Supreme Court observed:

4. In view of the admitted position that the land in question was acquired under the Land Acquisition Act, 1894 by operation of Section 16 of the

Land Acquisition Act, it stood vested in the State free from all encumbrances. The question emerges whether the Government can assign the land

to the erstwhile owners? It is settled law that if the land is acquired for a public purpose, after the public purpose was achieved, the rest of the land

could be used for any other public purpose. In case there is no other public purpose for which the land is needed, then instead of disposal by way

of sale to the erstwhile owner, the land should be put to public auction and the amount fetched in the public auction can be better utilised for the

public purpose envisaged in the Directive Principles of the Constitution. In the present case, what we find is that the executive order is not in

consonance with the provisions of the Act, and is, therefore, invalid. Under these circumstances, the Division Bench is well justified in declaring the

executive order as invalid. Whatever assignment is made, should be for a public purpose. Otherwise, the land of the Government should be sold

only through the public auctions so that the public also gets benefited by getting a higher value.

34. Recently in the case of Leela Wanti and Others Vs. State of Haryana and Others, a similar question came up for consideration before the

Apex Court. In that case, the State Government acquired the lands of the appellants therein for the purpose of constructing a brick kiln for feeder

and return channels in Village Shodapur. Notifications under Sections 4 and 6 read with Section 17 of the Land Acquisition Act, 1894 were

issued, and thereafter, the Land Acquisition Collector passed the award, and the compensation determined by him was also paid to the appellants

-land owners. After the expiry of several years, the appellants sent notices to the

functionaries of the Irrigation Department and the Land

Acquisition Collector for return of the acquired land by asserting that the purpose for which the lands were acquired had been achieved by the

Irrigation Department, and the acquired lands are now lying abandoned in the form of pits for the last 17-18 years and the same are no more

required by the Department concerned. The Supreme Court after noticing the Land Administration Manual and the Standing Orders held:-

19. If Para 493 is read in the manner suggested by the learned counsel for the appellants then in all the cases the acquired land will have to be

returned to the owners irrespective of the time gap between the date of acquisition and the date on which the purpose of acquisition specified in

Section 4 is achieved and the Government will not be free to use the acquired land for any other public purpose. Such an interpretation would also

be contrary to the language of Section 16 of the Act, in terms of which the acquired land vests in the State Government free from all encumbrances

and the law laid down by this Court that the lands acquired for a particular public purpose can be utilised for any other public purpose.

35. In terms of the aforementioned decisions, the purchaser, who has effected purchase of the land after issuance of the notification u/s 4(1) of the

Act, does not acquire any title to the property and such sale is void against the State and the purchaser acquires no right, title or interest in the land

and therefore, cannot challenge the validity of the notification or the regularity in taking possession of the land. The case on hand is a case, where

the purchase is said to have been effected after the possession of the lands were taken over and handed over the Housing Board and the award

was also passed. Therefore, no right, title or interest accrues to the respondents/ writ petitioners, pursuant to the sale deeds executed in their favour

during 2004-05. Consequently, they are not entitled to question the land acquisition proceedings and no relief ought to have been granted to them

in the said writ petition, challenging the acquisition proceedings. Therefore, W.P. No. 6108 of 2009 is liable to be dismissed.

36. The second writ petition being W.P. No. 20896 of 2009, has been filed to quash the proceedings dated 07.07.2008, by which the request

made by the erstwhile land owner seeking re-conveyance was rejected. Firstly, the writ petitioners being subsequent purchasers, had no

semblance of any legal right to question the said proceeding, which was addressed to the erstwhile land owner. Infact, the erstwhile land owners did not have any locus-standi to maintain a request for re-conveyance after having sold the property to the present writ petitioners. This fact appears to have been suppressed while filing W.P. Nos. 16989 to 16992 of 2007. In such circumstances no relief can be granted to the writ petitioners in W.P. No. 20896 of 2009.

37. The sheet anchor of the writ petitioners case, is based on a proceeding issued in R.C. No. 8222/95/F5, said to have been issued by one K.

Muthu, Special Tahilsdar (LA). It is brought to our notice, by the learned Additional Advocate General that the said proceeding itself was

cancelled and somehow a xerox copy of the said proceeding, was obtained by the writ petitioners, which was utilised by them for securing

planning permission. If that be the case, it is nothing but a clear case of fraud for which action should be initiated against all concerned in

perpetuating such fraud. Even as per the proceedings in R.C. No. 822/95/F5, issued by the said K. Muthu, Special Tahsildar, possession of the

lands have been taken over. The lands covered in the writ petitions were not subject matter of any prior litigation and not covered by any of the

judgment rendered earlier by this Court. Thus, it is evident that the writ petitioners have not only "managed" to obtain certain orders/proceedings

from the appellants, department, but also have misused the jurisdiction of this Court to achieve their sinister design. At no stretch of imagination,

such action would be permitted by this Court.

38. In the light of the above factual and legal position, we are unable to accept the submission of the learned Senior counsel for the

respondents/writ petitioners that the acquisition proceedings have lapsed. Rather the acquisition proceedings had attained finality after the award

was passed during 1983-86 and cannot be reopened at the behest of the writ petitioners, who have absolutely no right, title or interest over the

property in question and the sale deeds said to have been executed in favour of the writ petitioners, is void against the State as held by the

Supreme Court in the decision, referred supra.

39. For all the above reasons, the Writ Appeals are allowed and the impugned judgment in W.P. Nos. 6108 and 20896 of 2009, dated

01.11.2010 are set aside and the writ petitions stand dismissed. There shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.