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W.A.No.2175 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 19.04.2023

Judgment Pronounced on : **27.04.2023**

CORAM :

THE HON'BLE MR.T.RAJA, ACTING CHIEF JUSTICE

AND

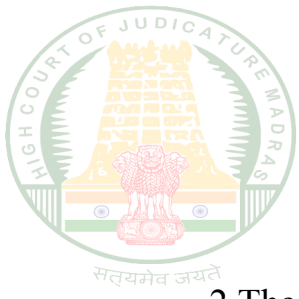
THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.A.No.2175 of 2022
and
CMP.Nos.16211, 16209 & 16206 of 2022

1. N.Devarajan
2. D.G.Lakshmi
3. D.Kavitha
4. D.Aishwarya ... Appellants

Versus

- 1.The Secretary to Government,
Municipal Administration and Water Supply Department,
Government of Tamil Nadu,
(Formerly called as Health & Local Administration Department)
Fort St.George, Chennai – 600 009.



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2. The Secretary to Government,
Revenue Department,
Government of Tamil Nadu,
Fort St. George, Chennai – 600 009.

3. The Deputy Secretary to Government,
Health & Local Administration Department,
Government of Tamil Nadu,
Fort St. George, Chennai – 600 009.

4. The District Collector, Chennai,
Office of the District Collector,
Singaravelan Maligai, Rajaji Salai,
Chennai – 600 001.

5. The Competent Authority,
Commissioner & Director of ULC & ULT,
Tondiarpet,
Chennai.

6. The Corporation of Chennai,
Represented by its Commissioner,
Rippon Buildings,
Chennai – 600 001.

7. M/s. United Breweries Limited,
Represented by its Senior Vice President,
Vittal Mallaya Road,
Bangalore – 560 001.

8. The Tahsildar,
Egmore – Nungambakkam Taluk,
Chennai.

... Respondents



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Writ Appeal filed under Clause 15 of the Letters Patent Act, to set aside the impugned order dated 27.06.2022 passed by the Learned Judge in W.P.No.24749 of 2018.

For Appellants :: Mr. P.Wilson, Senior Counsel
for Mr.Richardson Wilson

For Respondents :: Mr. S.Silambanan, Additional Advocate General,
Assisted by M/s.Aswini Devi, (for R5 & R6)

:: Mr. P. Muthukumar,
Special Government Pleader, (for R1 to R4 & R8)

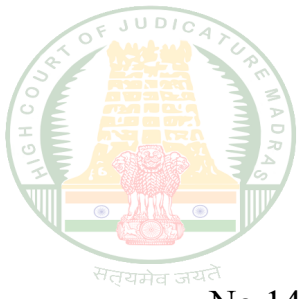
:: Mr. T.S.Gopalan & Co.,. (for R7)

JUDGMENT

D.BHARATHA CHAKRAVARTHY, J.,

A. The Appeal :

This Writ Appeal is directed against the order of the Learned Single Judge dated 27.06.2022 in W.P.No.24749 of 2018 in and by which the Writ Petition filed by the Appellants herein with the prayer to declare that the entire acquisition of the lands of the petitioners comprised in Old Revenue Survey No.40/5, New T.S. No.5/15, present T.S. No.5-B, Block



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No.14, *Periyakudal* Village, erstwhile *Egmore-Nungambakkam* Taluk, now *Aminjikarai* Taluk, ad-measuring 3881.306 sq. meters acquired under Award No.2/1953 dated 31.03.1953 and covered under possession certificate dated 09.04.1953 stand lapsed by operation of law as per Section 24(2) of the Right to Fair Compensation & Transparency in Acquisition, Rehabilitation and Resettlement Act and that respondents 1 to 6 and 8 cannot interfere with the petitioners' peaceful possession and enjoyment of the said property or its development, was dismissed.

B. The Submissions :

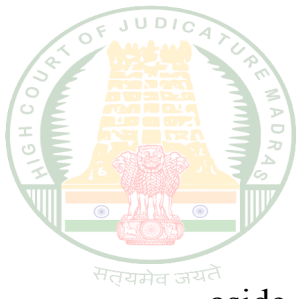
2.Heard *Mr.P.Wilson*, Learned Senior Counsel appearing on behalf of the appellants; *Mr.S.Silmbanan*, Learned Additional Advocate General appearing on behalf of the respondent Nos.5 & 6; *Mr.P.Muthukumar*, Learned State Government Pleader appearing on behalf of the respondent Nos.1 to 4 & 8, and *M/s.T.S.Gopalan & Co*, appearing on behalf of the respondent No.7.



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3. *Mr.P.Wilson*, Learned Senior Counsel appearing on behalf of the appellants submitted that the appellants/petitioners are the owners of the property in question. They having purchased the same by total number of 16 duly registered sale deeds executed by their predecessor in title, namely, M/s. United Breweries Limited, in the year 1995. The appellants are in possession of the property in question and they are running a School. It is claimed that the property is acquired by the Government and vested with the Government, and thereafter handed over to the Corporation of Chennai. Earlier the Corporation of Chennai started disturbing their peaceful possession and enjoyment and as such, they filed a Civil Suit in C.S.No.418 of 2001 by arraying the Collector of Chennai and the Commissioner Corporation of Chennai as defendants with a prayer to declare that they are the owners of the said property and for consequential relief of permanent injunction restraining the respondents from interfering with their possession and enjoyment, and also to declare the show-cause notice as null and void. Though the said suit was decreed by a Judgment and Decree dated 24.7.2009, on appeal by the defendants, by a Judgment and Decree dated 03.08.2018, in O.S.A.No.24 of 2017, the decree was set

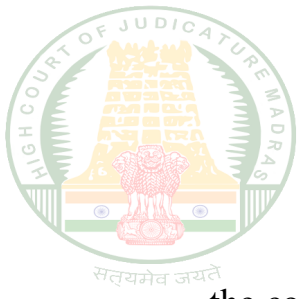


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aside and the suit was dismissed. The appellants also filed a Special Leave Petition in S.L.P.Nos.22155 & 22156 of 2018, but the same was dismissed by the Hon'ble Supreme Court of India, on 27.08.2018.

3.1 *Mr.P.Wilson* Learned Senior Counsel would submit that the said dismissal of the civil proceedings will not have a bearing in the present proceedings. As a matter of fact, the suit was dismissed only on the premise that the land has been acquired by the respondents. Subsequently, now, they have gathered the entire records. He would submit that as per the records, it is seen that by a notification issued under the Madras Town Planning Act, 1920, certain lands including the present land in question for which, the previous S.No.40/5 was also notified to be acquired for the purpose of Shenoy Nagar Town Planning Scheme. By virtue of Section 34 of the said Act, the said notification amounts to Section 6 declaration under the Land Acquisition Act, 1894. Even though there is a Section 6 declaration, subsequently, no award has been passed. As a matter of fact, even in the earlier suit proceedings, it is also recorded by the Division Bench of this Court that the respondent authorities are unable to produce



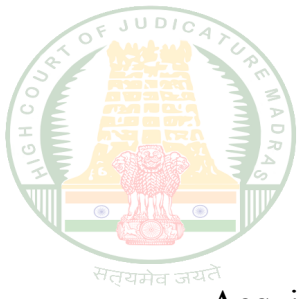
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the copy of the award passed in the matter so as to evidence the completion of the Land Acquisition Proceedings.

3.2 Learned Senior Counsel would further contend that now, they are also able to lay their hands on the alleged Award No.2/1953, and the same is produced along with the present proceedings, and that does not reflect the survey number of the land in question. Therefore, once it is clear that no award was passed, the above notification under Section 6 stood invalid on account of the efflux of the time of two years. Therefore, as per the Section 11-A of the Land Acquisition Act, 1894 (hereinafter *the Repealed Act*), since no award was passed within the prescribed period of two years from the date of Section 6 declaration or from the date on which the Section 11-A came into force, the Land Acquisition Proceedings stood lapsed.

3.3 Alternatively, he would plea that if the proceedings are considered to be pending, still he would be covered as per Section 24 (1) (a) of the Right to Fair Compensation and Transparency in Land



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Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter *the New Act*). Learned Senior Counsel would submit that the instant proceedings are filed challenging the claim of the land acquisition, and therefore the earlier suit will not operate as *res-judicata* as both claims stand on a different footing.

3.4 Learned Senior Counsel would submit that even though there have been protracted proceedings in this case, the fact remains that till date, the Corporation is unable to produce any document of title, thereby, the title would vest in it. If they plea that the land is acquired by them, the appellants should produce the award by which the Land Acquisition Proceedings are completed. Still, there is no proof for payment of any compensation or the possession being taken. As the Land Acquisition Proceedings are not completed and since the appellants have better title having purchased by registered sale deeds, the Writ Petition has to be allowed.



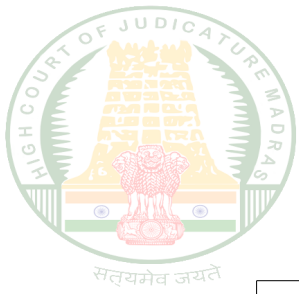
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3.5 Learned Senior Counsel has also relied upon the following

Judgments in support of his propositions :

<i>S.No</i>	<i>Citation</i>	<i>Cause Title</i>
1.	1970 (1) SCC 613	Madhura Prasad Bajoo Jaiswal & Ors., Vs. Dossibai N.B Jeejeebhoy
2.	1985 (3) SCC 648	Jaswant Singh and another Vs. Custodian of Evacuee Property, New Delhi.
3.	1990 (4) SCC 207	Krishena Kumar Vs. Union of India and Ors.,
4.	1996 (6) SCC 44	Union of India and Ors., Vs. Dhanwanti Devi and Ors.,
5.	1997 (1) SCC 650	Gajraj Singh and Ors., Vs. State Transport Appellate Tribunal and Ors.,
6.	2012 (1) SCC 792	Raghibir Singh Sehrawat Vs. State of Harayana and Ors.,
7.	2012 (9) SCC 503	Patasi Devi Vs. State of Harayana and Ors.,
8.	2016 (2) LW 122	Tamil Nadu Housing Board Vs. iGate Global Solutions Limited
9.	2016 (5) MLJ 80 SC	Vijay Latka and another Vs. Union of India and others
10.	2019 (10) SCC 229	Shiv Kumar and Another Vs. Union of India and other

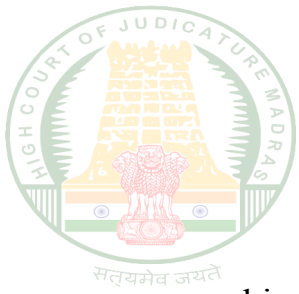


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S.No	Citation	Cause Title
11.	W.P.No.10712 of 2020	K.Saraswathy and another Vs. State of Tamil Nadu
12.	W.P.No.10912 of 2020	M.Palanisamy and 5 others Vs. State of Tamil Nadu and others
13.	2005 (2) LW 693	Ramalingam and others Vs. State of Tamil Nadu and others
14.	2005 (3) CTC 691	S.Harshavardhan and others Vs. State of Tamil Nadu and others
15.	2003 (5) SCC 83	Vijayadevi Navalkishore Bhartia and Another Vs. Land Acquisition Officer and Another
16.	1994 (5) SCC 686	State of UP and others Vs. Rajiv Gupta and another
17.	W.A.No.357 of 2021 and batch	N.Devanathan and others Vs. The State of Tamil Nadu

4. Per *contra*, Mr.S.Silambanan, Learned Additional Advocate General would submit that the present proceedings are clearly and categorically barred by *res-judicata*. This is the third round of proceedings and already, one set of title proceedings between the parties and one set of writ petitions challenging Land Acquisition Proceedings have been dismissed. He would submit that the corresponding survey number to the



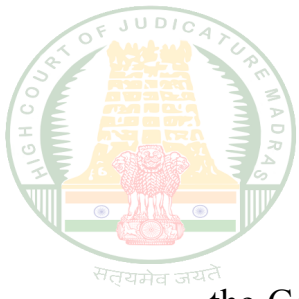
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subject matter property was S.No.40/5 and prior to the same 40-E. Even as per the earliest title deed of the predecessor in title, namely, United Breweries Ltd., vide Sale Deed dated 18.09.1915, only purchased Survey No.40/B and 40/A & C and never purchased Survey No.40/E .

4.1 On the other hand, a perusal of the sale deed would clearly show that S.No.40/E was shown as the boundary. The Civil Court has categorically found that when proceedings under the Urban Land (Ceiling and Regulation) Act, 1976 were initiated, the appellants' predecessor in title taking advantage of the assignment of a common survey number, while filing a statement also wrongly included this property which belonged to one *Unni Sait* and family, in their returns and consequently obtained a Patta, which was also duly canceled.

4.2 A perusal of the sale deed of the appellants would reveal the defective title as their vendor had not traced the title even in the recitals of the sale deeds, and it is merely mentioned that they possessed the properties. Therefore, he would first submit that the respondents, namely,

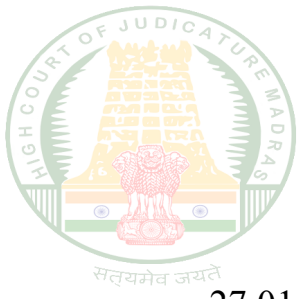


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the Government as well as the Corporation of Chennai can be called upon to produce the land acquisition records if only the appellants had title in respect of the subject matter of the land. When it is the categorical and clear finding of the Civil Court in the Judgment inter parties the appellants have not proved their title, then the present Writ Petition is bound to fail.

4.3 Learned Additional Advocate General would submit that directing the Government to produce the land acquisition record of the year 1950 to 1953 in the year 2020 to 2023 causes grave prejudice as the concerned award could not be traced out. But, however, the Section 6 declaration was produced even before the Learned Single Judge. Further, when they once again tried to trace the documents pursuant to the directions of this Court and now they also found out the old records (i) in proof of the award enquiry was being conducted on 22.09.1952 indicating the subject matter property ; (ii) the statement of the tenant before the land acquisition authorities dated 13.11.1952 ; (iii) the statement of the receiver dated 01.12.1952; (iv) the statement of the joint managing receivers of the estate of Late *Haji Ismail Sait*; (v) the award enquiry proceedings dated

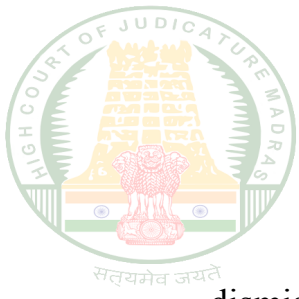


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27.01.1953, in which, the said original owners of the *Sait* and family, had agreed to receive a sum of Rs.6000/- as total compensation. The Award enquiry proceedings dated 09.02.1953 including the notes of inception of the Special Deputy Collector could all be traced out and were produced before this Court. All these documents would cumulatively show that the land in question is clearly vested in the Government, and thereafter, it was handed over to the Corporation, which is a part of the Shenoy Nagar Scheme, and the appellants have only taken undue advantage of the missing award copy.

4.4 Learned Additional Advocate General would submit that when the Judgment of the Civil Court which is even confirmed by the Hon'ble Supreme Court on merits and the time was given to them to vacate the property within one year, their repeated filing of these proceedings is an abuse of process of law. This apart, the first appellant had also earlier filed a Writ Petition No.14658 of 2001, challenging the notice issued in respect of the very same property and on the very same ground that the award does not reflect the present survey number and the said Writ Petition was



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dismissed by a Judgment dated 16.08.2001.

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4.5 Similarly, thereafter, the students of the school run by the appellants were put in front and they filed a Writ Petition in W.P.No.34259 of 2018 and by an order dated 03.01.2019 the said Writ Petition was dismissed. In the said Judgment dated 03.01.2019, the earlier Judgment in yet another Writ Appeal No.2210 of 2018 is relied upon whereunder the prayer under Section 24(2) of *the New Act* was specifically considered and refused. Therefore, he would submit that the present Writ Appeal is nothing but vexatious litigation and it is barred by *res-judicata*.

5. We have considered the rival submissions made on either side and perused the material records of the case.

6. We are unable to agree with the Learned Senior Counsel appearing on behalf of the appellants and we hold that the appeal is bound to fail for the following reasons:

(i) Firstly, the prayer is made to declare the proceedings as having

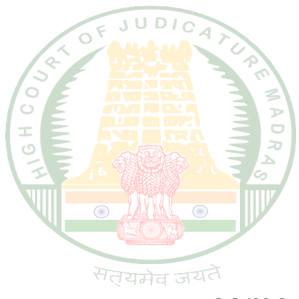


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lapsed under Section 24(2) of *the New Act*. To make a prayer under Section 24(2) of *the New Act*, firstly, it has to be proved that the land acquisition proceedings initiated under *the Repealed Act* are pending and that an award has been passed before five years of the commencement of *the New Act*, and that neither possession has been taken nor compensation has been paid. In this case, it is the contention of the Learned Senior Counsel that the award itself is not passed. Therefore, *per se* the claim will not come under Section 24(2) of *the New Act*, and therefore, the Writ Petition filed is bound to fail ;

(ii) Learned Senior Counsel would also submit that the appellants' case would be within the purview of 24(1)(a). Section 24A of *the New Act*, covers the case where the award is not yet passed, and the proceedings have been pending under *the Repealed Act*, in which, the transitory provision is made to continue the proceedings. In this case, it is the contention of the Learned Senior Counsel that after the Section 6 declaration, no proceedings at all are pending and therefore, when nothing is pending and even as per the appellants, the proceedings have lapsed under Section 11A of *the Repealed Act*, then absolutely the case cannot



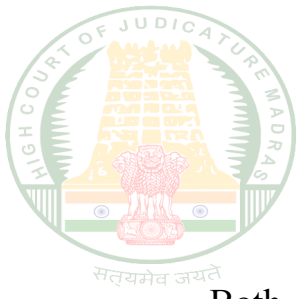
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come under Section 24(1)(a) of *the New Act*;

(iii) The submission of the Learned Senior Counsel is that once Section 11-A was inserted in *the Repealed Act* and since no award was passed within two years thereof, the Land Acquisition Proceedings are deemed to have lapsed. But, in this case, there is nothing on record to show that the Land Acquisition Proceedings stood lapsed. On the other hand, the Section 6 declaration, thereafter, the award enquiry and all the records have been produced. It is common knowledge that under the erstwhile Act, the land acquisition authorities, with the same reference number i.e., Award No.2/1953, used to pass separate awards in respect of survey numbers in a particular group or particular owner etc., and there will be multiple awards in respect of the same proceedings. Just because the one Award No.2/1953 does not contain the instant survey number, that by itself would not prove that the land in question was never acquired, therefore, the said argument of the Learned Senior Counsel stood negated.

(iv) Further, on perusal of the entire records, more specifically the appellants claim is to take the title from M/s.United Breweries Limited. United Breweries Ltd., claims title from a sale deed dated 18.09.1915.



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Both sides Learned Counsel, agreed that originally the property was bearing survey No.40/E, which was, thereafter reclassified as S.No.40/5 and which was thereafter reclassified as survey No.5/15/T.S.No.5B. Therefore, the appellants predecessors in the title itself did not have any title in respect of the present property. As a matter of fact, a report was submitted by the Collector of Chennai, after a detailed examination of records to the Commissioner, Corporation of Chennai, by Demi Official letter dated 17.05.2001, clearly shows that it is only the erstwhile S.No.40/3 was owned by the M/s.United Breweries Limited, and as far as S.No.40/5 was owned by one *Unni Sait* and their family. When the petitioners themselves have filed a comprehensive suit for the title by arraying both the Collector as well as the Commissioner, Corporation of Chennai as parties in the suit inter-parties by Judgment dated 03.08.2018, a Hon'ble Division Bench has categorically found the said facts in paragraph 9.5 of the Judgment. Therefore, when it has been categorically held that the appellants have no title in respect of the suit property, their further attempt to find the missing parts in the acquisition proceedings to assert title is only a futile attempt and will not take them anywhere.

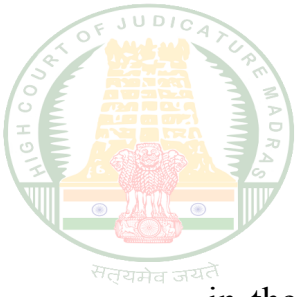


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(v) The contention of the Learned Senior Counsel is that the suit was dismissed only on the ground that the plaintiff's case was weak and it was also recorded that the defendant has not produced the proof of Land Acquisition Proceedings and this would itself entitle the appellants to question the Land Acquisition Proceedings is erroneous in law. Once in the comprehensive title suit, the decree is passed against the appellants, thereafter, any further claim will be barred by *res-judicata*;

(vi) This apart as rightly contended by the Learned Additional Advocate General finding fault with the Land Acquisition Proceedings and the statutory notices, and an earlier Writ Petition is also filed by the first appellant, which is also dismissed by this Court in W.P.No.14658 of 2001. This apart, in further proceedings in Writ Appeal No.2210 of 2018, the very prayer with respect to the physical possession and non-payment of compensation, etc., under Section 24(2) has been specifically considered in paragraphs Nos.5 & 6 of the Judgment and has been refused. Therefore, this is only the repeated attempt of the petitioners to assert the same and when the substantial issue was one and the same, and was considered repeatedly, both in the ordinary, original civil jurisdiction by this Court and



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in the extraordinary writ jurisdiction by this Court earlier and repeatedly the claims of the petitioners having been negated, we hold that the appellants' claim cannot be acceded to.

D. The Result :

6. For all the above reasons, we are unable to find any error on the part of the Learned Single Judge in dismissing the Writ Petition filed by the appellants, and accordingly, this Writ Appeal is dismissed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

J.)

(T.R.,A.C.J.)

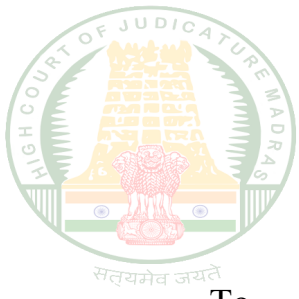
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Index : Yes/No

Neutral citation : Yes/No

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Government of Tamil Nadu,
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THE HON'BLE ACTING CHIEF JUSTICE



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AND

D.BHARATHA CHAKRAVARTHY, J.,

klt

Pre-Delivery Judgment in

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