

P. Kalaivani and 2 Others Vs. the State of Tamil Nadu Rep. by Its Commissioner and Secretary to Government,. Housing and Urban Development Dept. Fort St., George, Madras-9 and 3 Others

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Court : Chennai

Decided On : Apr-12-2000

Reported in : 2000(2)CTC292

Judge : S. Jagadeesan, J.

Acts : [Land Acquisition Act, 1894](#) -- Sections 4 (1), 5-A, 6, 9, 10, 11-A, 16, 17 (2) (4), 48 (1); Sale Therein Act, 1979; [Constitution of India](#) -- Article 226

Appeal No. : W.P.Nos. 18722 to 18724 of 1994

Appellant : P. Kalaivani and 2 Others

Respondent : The State of Tamil Nadu Rep. by Its Commissioner and Secretary to Government,. Housing and Urb

Advocate for Def. : Mr. V. Rengaraju, Government Adv., ;Mr. K. Chelladurai, Adv.

Advocate for Pet/Ap. : : Mr. N. Jothi, Adv.

Judgement :

ORDER

1. The issue involved in all the three writ petitions is common and by consent of both the counsel, all the writ petitions are taken up for joint disposal.
2. The petitioner in W.P.No.18722 of 1994 is the owner of an extent of 1078.8 sq.ft in Survey No. 590/6A1N of Sevilimedu by virtue of Document No.1712 of 1993 on the file of Sub-Registrar's office, Kanchipuram.
3. The petitioner in W.P.No.18723 of 1994 is the owner of the land to an extent of 3 cents in Survey No.590/6B5 of Sevilimedu Village under Document No.2049/89,dated 18.10.89 on the file of Joint Sub-Registrar No. II, Kancheepuram.
4. The petitioner in W.P.No.18724 of 1994 claims to be owner the land to an extent of 3 cents in Survey No.590/4AID of Sevilimedu village. He has not furnished the particulars with regard to the sale deed, in his favour .
5. The petitioners herein have filed these writ petitions to quash the notification under Section 4(1) of the Land Acquisition Act in G.O.R.No.177, dated 25.6.75 published in the gazette on 16.7.75 and the declaration under Section 6 of the Act in GO. Ms.No.107 9 Housing and Urban Development dated 13.7.78 published in the government gazette on 14.7.78 in so far as it relates to the petitioners lands.
6. On 13.3.2000 W.M.Ps.Nos.13917 to 13919 of 1998 filed by the petitioners in each of the writ petitions praying for the appointment of advocate commissioner, were posted for disposal. On that date. Mr.Jothi, the learned counsel for petitioners represented that the acquisition proceedings pertaining to the petitioners lands were quashed by this Court in the earlier proceedings and after such quashing of the land acquisition proceedings the petitioners herein bona fide purchased the properties and constructed the houses by raising loans. While so the Tamil Nadu State Housing Board all of a sudden issued a letter dated 13.9.94 directing the petitioners to vacate and surrender possession, branding them as 'trespassers' and the petitioners herein have filed these writ petitions to challenge the proceedings of the Housing Board.

7. The above W.M.Ps. have been filed seeking for the appointment of a Commissioner to inspect the area and submit a Report, so that this Court can have the details with regard to the existence of several buildings apart from the petitioners houses. This Court dismissed those W.M.Ps on the ground that the relevant date to give the benefit to the petitioners as bona fide purchasers would be the date of construction of, the building. If the construction had been put up subsequent to the initiation of the acquisition proceedings, then the petitioners may not be entitled for any benefit and as such under the writ proceedings the date of construction, involving the factual question, cannot begone into. The mere existence of the building will not enable the petitioners to claim any benefit and as such the physical features of the land as on date may not be of any help to the petitioners, or any relevance for the disposal of the writ petitions.

8. After signing the said order dated 13.3.2000 I looked into the prayers in the writ petitions. As the petitioners have filed these writ petitions to quash the 4(1) notification dated 25.6.75 and 6 declaration dated 13.7.78, a doubt arose as to how a second writ petition is maintainable to quash the above said land acquisition proceedings when the learned counsel for the petitioners represented that the petitioners herein had purchased the land subsequent to the quashing of the land acquisition proceedings by this Court at the instance of the original land owners, the vendors of the petitioners. Hence I directed the matter to be posted for orders on 24.3.2000. The cases were listed on the said date.

9. I repealed the representation made by the counsel for the petitioners that the petitioners purchased the land subsequent to the quashing of the land acquisition proceedings at the instance of their vendors and then the petitioners constructed the houses. The said representation had been recorded in my earlier order dated 13.3.2000. Mr. Jothi, the learned counsel for the petitioners fairly represented that what was recorded in the earlier order dated 13.3.2000 is correct. Thereafter I asked the learned counsel as to what for the writ petitions have been filed. Immediately he replied that the writ petitions have been filed to quash the notice issued by the State Housing Board dated 13.9.94, directing the petitioners to vacate and hand over possession branding them as trespassers, on the ground that the land vests with the Housing Board after the completion of the acquisition

proceedings. Then I asked the learned counsel to read the prayers in the writ petitions. After reading the prayers in the writ petitions, the learned counsel expressed his apology and corrected himself that the writ petitions have been filed to quash the original acquisition proceedings, Then I posed the question as to how the writ petitions are maintainable when in the earlier writ petition the impugned land acquisition proceedings at the instance of the petitioners vend or had already been quashed. The learned counsel requested time to clarify the matter and the writ petitions were listed on 31.3.2000.

10. The learned counsel for the petitioners contended that some of the land owners in respect of the lands forms part of the original notification under Section 4(1) as well as the declaration under Section 6 of the Act challenged the acquisition proceedings in W.P.No.1073 of 1987 as stated in the affidavits filed in support of these writ petitions. The said writ petition was allowed and the acquisition proceedings of those petitioners were quashed. Hence the petitioners herein are also entitled for such benefit and on the basis of the judgment in W P.No.1073 of 1987 the acquisition proceeding pertaining to the lands of the petitioners are also liable to be quashed. He further represented that the writ appeal is pending against the said judgment inW.P.No.1073 of 1987 and as such these writ petitions may be posted along with the said writ appeal for final disposal. I declined to concede to the request of the learned counsel for the petitioners to club these writ petitions along with the writ appeal and directed the counsel to argue the matter on merits. The learned counsel requested for time to look into the matter. As the question involved in these writ petitions is whether the petitioners herein are entitled to the benefit of the judgment of this Court in W.P. 1073 of 1987, I directed the matter to be posted at 2.15 P.M. granting time for the counsel for the petitioners to look into the legal aspect.

11. The learned counsel put forth the following contentions:

(1) If the land acquisition proceedings i.e., the notification under Section 4(1) as well as the declaration under Section 6 of the Act is quashed at the instance of some of the landowners, the benefit will enure to those landowners who did not come to court challenging the acquisition proceedings and as such the vendors of

the petitioners will be entitled for such benefit.

(2) When the vendors of the petitioners are entitled for the benefit of the quashing of the acquisition proceedings at the instance of some of the landowners, they deemed to be the legal owners of the land and as such they have every lawful right to deal with the lands.

(3) Even assuming that the vendors of the petitioners are not entitled for such benefits, the petitioners being bona fide purchasers for value subsequent to the acquisition proceedings without knowledge about the same to the acquisition proceedings, they have got a legal right to challenge the impugned acquisition proceedings.

(4) If the land acquisition proceedings had been completed and the Housing Board had been handed over possession as stated in the counter affidavit, then the laches on the part of the officials of the Housing Board i.e., the failure on their part to prevent the petitioners from putting up the construction in the acquired land would confer a right on the petitioners to continue to be in possession and thereby to challenge the impugned acquisition proceeding.

(5) Similarly the petitioners being the bona fide purchasers for value and having invested huge amounts and constructed the houses, the laches on the part of the officials of the Housing Board to prevent the petitioners would confer a right of equity on the petitioners to claim the property and on this ground also the writ petitions are maintainable.

(6) In the counter affidavit, the respondents have raised the plea of laches on the part of the petitioners in coming to the court so belatedly. When once the writ petitions have been admitted the question of laches cannot be permitted to be raised.

12. Before considering the questions raised by the learned counsel for the petitioners it is necessary to recall the representations of the counsel and the averments in the affidavit. Admittedly the representation made by the counsel for the petitioners at the earliest point of time is that the land acquisition proceedings

in respect of the lands of the petitioners were quashed and thereafter the petitioners had purchased the lands and put up the construction is patently an incorrect statement. The admitted fact is that larger extent of lands had been acquired, out of which some of the owners of the land, which forms part of the impugned land acquisition proceedings challenged the acquisition proceedings before this court in W.P.No.1073 of 1987. The prayer in the same writ petition is for the issue of a certiorarified mandamus calling for the records of the first respondent therein comprised in his proceedings in G.O.R.No.177, Housing, dated 25.6.75 and G.O.Ms.No. 1079 Housing and Urban Development dated 13.7.78 and to quash the same in so far as it relates to the petitioners land therein and consequently direct the exclusion of the lands of the petitioners in Survey Nos.590/4. 590/4 and 5, 590/4A, and 5A. 590/4-131/A, 590/4B. 590/5, 590/5-A. 590/5A-1. 590/6. 590/6A. and 590/6B of No.58. Sevilimedu Village, Kancheepuram Taluk, Chengalpattu District.

13. By order dated 25.10.91 the learned Single Judge of this Court, following the judgment of the Apex Court in State of Tamil Nadu v. Mohammed Yousuf, : [1991]3SCR375 allowed the writ petition and quashed the acquisition proceedings, so far as the lands of the petitioners' therein.

14. Coming to the first contention of the learned counsel for the petitioners that the vendors of the petitioners are entitled for the benefit of the order of this court in W.P. No.1073 of 1987 and by virtue of the said judgment the entire land acquisition proceedings are deemed to have been quashed is concerned, it is difficult to appreciate the said contention. In fact the learned counsel for the petitioners relied upon the judgment reported in M/s. Moghul Travels & Transports Co., v. Union of India, : AIR1990 Delhi56 and reinforce his argument that when once the notification under Section 6 is quashed at the instance of some one in the earlier proceedings, no separate writ petition by other landowners is necessary.

15. In the case relied upon by the learned counsel for the petitioner, it is true that the notification under Section 6 had been set aside by the High Court in the earlier writ proceedings at the instance of some of the landowners. When the said notification was in force against the other landowners who, did not challenge the

same on the earlier occasion, the petitioners in the said case challenged the notification under Section 6 on the ground that the dispute has already been considered by a Division Bench of the said Court and as the notification under section 6 in entirety had been quashed, the State cannot enforce the same and the petitioner is also entitled for such benefit even though they have not independently challenged the said notification under Section 6. In fact in the said case, the counsel appearing for the Government had conceded as follows:

'Learned counsel for the respondents have conceded before me that certainly Tughlakabad was one of the 13 villages in respect of whom the legality and constitutionality of the acquisition under various notifications under section 6 of the Act was considered and it was found therein that it was not noticed by the Lt. Governor in any of those notifications that the Land Acquisition Collector had not stated how much area was to be notified under Section 6 of the Act. It has similarly been conceded that the Division Bench had found the notifications to be bad for failure of stating any reasons of his satisfaction by the Lt. Governor and for mindless exercise of power under Section 6 of the Act and consequently the matter in dispute would be covered by B.R. Gupta, for the reasons stated therein. It is also conceded that Tughlakabad is one of the villages in respect whereof notification under Section 6 of the Act, impugned in this writ petition, was specifically quashed.'

The learned Judge has stated as follows:

'In fact said notification already stands quashed in B.R. Gupta (supra) and the petitioner need not have claimed separate order of quashing thereof. Notification as a whole stands quashed and the said judgment would be operative in respect of all lands referred to in the notification. No separate writ need be filed by other land owners so much so that it would be operative irrespective of the fact whether the compensation has been received by the owners or has not been received. The moment notification under Section 6 of the Act is quashed by the Court in one writ petition the entire land covered by that notification would stand de-acquired forthwith.'

From the above passage, it is clear that in that case, the learned Judge has found that the notification under Section 6 in entirety had been quashed. When once the notification as a whole is quashed by the court, then it is not open to contend that the benefit of the order cannot be extended to those; who are affected by such notification and failed to come before the court. Once the court set aside the notification, as a whole naturally the benefit would enure to all.

16. But so far as the case on hand is concerned, the learned counsel for the petitioners has not placed any material before this Court to establish that in W.P.No.1073 of 1987 the court had quashed the notification under Section 4(1) as well as the declaration under section 6, the impugned proceedings herein as a whole. When the relief sought for in that writ petition which had been extracted above, is restricted only to the owners of the lands who are the petitioners in the said writ petition, this Court has granted the relief only pertaining to the lands of the petitioners in the said writ petition and had not quashed the entire notification, as such. This is because the rule nisi issued to the respondents is only to show-cause as to why the relief sought for by the petitioners in the said writ petition cannot be granted. Hence the prayer is the relevant factor for the grant of the relief while the rule nisi is made absolute. Only if the notification as a whole is quashed at the instance of a single person or collective. Persons then only the benefit of the said order can be extended to the other affected persons even though they do not approach the court.

17. That is not the position in the case on hand. Here the land acquisition proceedings had been quashed only in respect of the petitioners in W.P.No.1073 of 1987. Hence the vendors of the petitioners who did not challenge the acquisition proceedings in respect of their lands cannot claim any benefit under the order of this Court in the said W.P.No.1073 of 1987.

18. The learned counsel for the petitioners also relied upon yet another judgment in the case of M/s. Shenoy & Co v. Commercial Tax Officer Bangalore, : [1985]155ITR178(SC) for his proposition that if the proceedings are set aside at the instance of some, the benefit is deemed to be extended to all even though the others have not challenged the proceedings before court. The case relied upon by

the counsel for the petitioners relates to the validity of the Karnataka Tax on Entry of Goods into Local Areas for consumption, Use or Sale Therein Act, 1979. In the said case the validity of the entry tax had been challenged and the court held the levy of entry tax is invalid. The said principle cannot be made applicable to the facts of the present case for the simple reason that when once the levy of tax is set aside on the ground of want of jurisdiction of the State, then the State has no power to enforce the levy of entry tax in toto. Hence it goes without saying that, the levy of entry tax in entirety is bad. Hence this judgment is also not of any help to the petitioners.

19. The learned Government Pleader pointed out the judgment, reported in *Abhey Ram v. Union of India*, : [1997]3SCR931 and contended that when the declaration under section 6 is quashed in respect of the writ petitioners alone, then the said decision operates only relating to the writ petitioners and not the persons who were not the *eo nomine* parties to the decision. In the said judgment, the apex Court has held as follows:

'The question then arises is: Whether the quashing of the declaration by the Division Bench in respect of the other matters would enure the benefit to the appellants also. Though, *prima facie*, the argument of the learned Counsel is attractive, in deeper consideration, it is difficult to give acceptance to the contention of Mr.Sachhar. When the Division Bench expressly limited the controversy to the quashing of the declaration qua the writ petitioners before the Bench, necessary consequences would be that the declaration published under Section 6 should stand upheld.

It is seen that before the Division Bench judgment was rendered, the petition of the appellants stood dismissed and the appellants had filed the special leave petition in this Court. If it were a case entirely relating to section 6 declaration as has been quashed by the High Court, necessarily that would enure the benefit to others also, though they did not file any petition, except to those whose lands were taken possession and were vested in the State under Section 16 and 17(2) of the Act free from all encumbrances. But it is seen that the Division Bench confined the controversy to the quashing of the declaration under Section 6 in respect of the

persons qua the writ petitioners before the Division Bench. Therefore, the benefit of the quashing of the declaration under Section 6 by the Division Bench does not enure to the appellants. It is true that a Bench of this Court has considered the effect of such a question in *Delhi Development Authority v. Sudan Singh*, (45)1991 DLT 502 . But, unfortunately, in that case the operative part of the judgment referred to earlier has not been brought to the notice of this Court. Therefore, the ratio therein has no application to the facts in this case. It is also true that in *Yusuobhai Noormchamed Nendoliya's case*, AIR 1991 SCW 2528, this Court had also observed that it would enure the benefit to those petitioners. In view of the fact that the notification under section 4(1) is a composite one and equally the declaration under Section 6 is also a composite one, unless the declaration under section 6 is quashed in toto, it does not operate as if that the entire declaration requires to be quashed.'

Hence the first contention is rejected.

20. Point No.2:- In view of the findings given for point No.1 that the petitioners' vendors cannot have the benefit of the order of this Court in W.P. 1073 of 1987 there is no need to discuss elaborately on question No.2. Since the land acquisition proceedings had become final so far as they are concerned, they cannot be deemed to be the legal owners of the land.

21. Point No.3:- In order to consider this issue, it is necessary to recall the relevant dates. The notifications under section 4(1) of the Land Acquisition Act is published in the Gazette on 16.7.75, the enquiry under Section 5-A of the Act was conducted in December, 1975. The objections were received from the landowners and were rejected. The remarks of the Housing Board, the requisitioning body, was also communicated to the landowners. After following all the formalities, the declaration under Section 6 was published in the Government Gazette dated 14.7.78. As per the counter affidavit filed by the Government, after the award enquiry, the award was passed in Award No. 20/86, dated 23.9.86. The possession of the land was also taken and handed over to the Tamil Nadu Housing Board on 3.2.87.

22. Hence the fact remains that as per the statement made by the petitioners herein in their affidavit, admittedly the petitioners had purchased the properties

subsequent to the completion of the entire acquisition proceedings, inclusion of the passing of the award, taking over possession and handing over of the possession to the Tamil Nadu Housing Board.

23. Hence the question for consideration is whether on the date of purchase by the petitioners, their vendors have got any right of alienation and whether the petitioners can be considered to be bona fide purchasers.

24. In the judgment reported in *Yadu Namtan Garg v. State of Rajasthan*, : AIR 1996 SC520 , the Apex Court has held that the purchase of the land subsequent to the publication of notification under section 4(1) of the Land Acquisition Act was not lawful against the State in the following terms:

'We do not find any substance in any of these contentions. It is seen that long after the notification under Section 4(1) was published in the Gazette, the appellant had purchased the property and constructed the house thereon. Therefore, as against the State his purchase was not lawful and it could not be used against the State to clothe it with a colour of title as against the State. It is an encumbrance against the State and when the acquisition was finalised and the possession is taken, the State under Section 16 is entitled to have the possession with absolute title free from all encumbrances. The appellant cannot get any title much less valid title to the property.'

25. An identical view was expressed by the Apex Court in the Judgment reported in *U.P. Jal Nigam, Lucknow v. M/s. Kalra Properties (P.) Ltd.*, : [1996]1SCR683 as follows:

'It is settled law that after the notification under Section 4(1) ' published in the Gazette any encumbrance by the owner does not bind the Government and the purchaser does not acquire any title to the property. In this case notification under section 4(1) was published on March 24. 1973, possession of the land admittedly was taken on July 5, 1973 and pumping station house was constructed. No doubt, declaration under Section 6 was published later on July 8, 1973. Admittedly power under Section 17(4) was exercised dispensing with the enquiry under Section 5-A and on service of the notice under Section 9 possession was taken, since urgency

was acute, viz., pumping station house was to be constructed to drain out flood water. Consequently, the land stood vested in the State under Section 17(2) free from all encumbrances. It is further settled law that once possession is taken, by operation of Section 17(2), the land vests in the State free from all encumbrances unless a notification under section 48(1) is published in the Gazette withdrawing from the acquisition. Section 11-A as amended by Act 68 of 1984. therefore does not apply and the acquisition does not lapse. The notification under Section 4(1) and the declaration under Section 6, therefore, remain valid. There is no other provision under the Act to have the acquired land divested, unless, as stated earlier, notification under Section 48(1) was published and the possession are surrendered pursuant thereto. That apart, since M/s. Kalra Properties, respondent had purchased the land after the notification under Section 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 under Section 6 was published.'

However, in the above case, the Supreme Court has held that the respondent therein though cannot acquire any title to the land, at best he would be entitled to step into the shoes of the owner and claim payment of 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 under Section 4(1) is the price to which the owner or the person who has an interest in the land is entitled to. Therefore the purchaser i.e., the persons interested in the compensation, since he steps into the shoes of the erstwhile owner, is entitled to claim compensation. In the case on hand also at the best the petitioners will be entitled only for the said benefit of compensation alone and they have no right to challenge the acquisition proceedings.

26. Yet another judgment of the Supreme Court reported in *Ajay Krishnan Singhal v. Union of India*, : AIR 1996 SC2677 is also of the similar view wherein it has been held as follows:

'Another contention raised by Shri Ravinder Sethi is that the claimant in the first appeal had purchased the property after the declaration under Section 6 was published and that therefore he does not get any right to challenge the validity of the notification published under Section 4(1). Since his title to the property is a void title, at best he has only right to claim compensation in respect of the acquired land claiming interest in the land which his predecessor-in-title had. In support thereof, he placed reliance on the judgments of this Court in *State of U.P. v. Smt. Pista Devi*, : [1986]3SCR743 ; *Gian Chand v. Gopala*, : [1995]1SCR412 ; *Mahavir v. Rural Institute, Amravati*, : (1995)5SCC335 and *Laxmi Engineering Works v. P.S.G. Industrial Institute*, 1995 (3) 583: AIR 1993 SCW 2114. We need not deal at length with this issue as is the settled legal position,'

27. In the judgment reported in *Mahavir v. The Rural Institute, Amravati*, : (1995)5SCC335 the Supreme Court had expressed the view as follows:

' We do not find any justification warranting interference in this matter. Admittedly, notification under Section 4(1) of the Land Acquisition Act (for short, 'the Act') was published on January 29, 1957 and thereafter the owner sold the properties to the petitioners on June 11, 1957 and August 22, 1958. Declaration under Section 6 was published on August 14, 1958. Thus, it could be seen that the sales made after the publication of the notification under Section 4(1) are void sales and the state is not bound by such a sale effected by the owner. Admittedly the notice under Section 9 and 10 was served on September 23, 1958 and award was made on October 9, 1959 and possession was taken on November 18, 1959. Thus the acquisition was complete. The possession of the Government is complete as against the original owner and title of the original owner stood extinguished and by operation of Section 16 the State acquires the right, title and interest in the property free from all encumbrances. So any encumbrance made by the owner after notification under Section 4(1) was published does not bind the State.'

28. From the above laid principles, it is clear that if any transaction is entered into by the owner of the land subsequent to the publication of the notification under Section 4(1) as well as the declaration under Section 6 of the Act, it will amount to an encumbrance over the property and such encumbrance will not bind the state.

The principle being that when once such notifications are published, the landowner has no right to deal with the property. Immediately after the completion of the land acquisition proceedings i.e., the passing of the award and taking over the possession of the land as per the provisions of the land acquisition proceedings, the acquired land vests with the Government without any encumbrance whatsoever.

29. When that be the position, the petitioners herein, having admittedly purchased the property long after the passing of the award and taking over possession, cannot have any right to challenge the acquisition proceedings. Further the alienation in favour of the petitioners being totally void as the vendors of the petitioners, the original landowners have no title to be conveyed on the date of sale, the petitioners cannot be said to be bona fide purchasers. Hence the question of bona fide also will not arise in this case. Hence these contentions are also rejected as unsustainable.

30. Point No.4: So far as the fourth contention of the learned counsel for the petitioner that the laches on the part of the Housing Board would confer a right on the petitioners is concerned, as stated already, the apex Court had repeatedly held that once the notification under Section 4(1) is issued, the landowner has no right to deal with the property and any encumbrance created by the landowner in respect of such land which is the subject-matter of the notification under Section 4(1) will not bind the State. When once after completion of the acquisition proceedings the possession has been taken by the State and handed over to the requisitioning body, the Housing Board in this case, naturally the requisitioning body may take some time to implement the scheme. Till the commencement of the scheme, the land would lie vacant. Merely because the lands are lying vacant after the completion of the land acquisition and vesting of the land with either the State or the requisitioning body, the erstwhile owner of the land has no title or right to alienate the property. Similarly the same will not embolden the persons like the petitioners to purchase the property in order to put forth an unlawful claim.

31. In fact in more than one case, this Court criticised the conduct of the officials in allowing the indiscriminate encroachments over the Government properties. As

pointed out by the learned counsel for the petitioners, the inaction on the part of the officials of the Housing Board to take care over the land vested with the Housing Board is nothing but a total dereliction of duty on their part. It is not known as to whether such dereliction of duty on the part of the officials of the Housing Board is with the connivance of the erstwhile landowners or the petitioners herein. Equally it is not clear as such dereliction of duties had been cropped up among the officials either with some personal interest or at the intervention of the politicians.

32. When it is the settled law that the landowner has no right to deal with the property i.e., his title is being lost on the issue of the notification under section 4(1) of the Act, he has no title to pass on the land which vests with the Government free from all encumbrances; which means any encumbrance that had been created by the landowner during the pendency of the acquisition proceedings is null and void. Hence the purchaser from such landowners cannot derive any title. When that be the case, the petitioners herein cannot have any better title than that of their vendors. When the land vested with the State free of all encumbrances, it is a known fact that the vendors of the petitioners has no title over the property. The petitioners are necessarily be the trespassers as they do not derive any valid title under the sale deeds as the sales in their favour is totally void. Hence there is no merit in the contention of the learned counsel for the petitioners.

33. point No.5: So far as the ground raised by the learned counsel for the petitioners that the inaction on the part of the officials of the Housing Board to prevent the petitioners from putting up the construction would confer a right of equity on the petitioners to challenge the acquisition proceedings or to claim title is concerned, there is no dispute that the land acquisition proceedings were over as early as 1987 when the possession was taken by the Housing Board. The learned counsel for the petitioners contended that the vendors of his clients represented that they are the owners of the land under dispute and executed the sale deed and handed over possession to the petitioners. The petitioners also believed such representation and purchased the property, raised loans and constructed the building. Whatever the manner in which the learned counsel put forth the plea, ultimately it leads to the only question as whether the vendors of the petitioners have got any semblance of title to pass on to the petitioners herein on the date of

sale and whether the petitioners being the purchasers subsequent to the completion of the acquisition proceedings can challenge the validity of such acquisition proceeding.

34. As held already, when the vendors of the petitioners have no title at all to be conveyed, the petitioners cannot be considered to be owners of the land. Whatever the investment they made in the land is only at their risk. Hence such investment by the petitioners will not confer any right of equity on them. As the Apex Court has pointed out in more than one judgment referred to above, ultimately the petitioners can step into the shoes of their vendors to claim compensation of the land alone. When the petitioners have purchased the land subsequent to the completion of the acquisition proceedings, they are only trespassers. It is not the case of the counsel for the petitioners that the petitioners made any verification regarding the title of their vendor before ever they purchased the land. There is no averment in the affidavit also to that effect. Hence their plea of mere acceptance of the representation made by the vendors would clearly exhibit the lacking of bona fides on the part of the petitioners. In such circumstance, the principle of equity has no application at all to the facts of the present case. Hence this contention is also untenable both on law as well as on facts.

35. Point No.6:- So far as the contention regarding laches of the petitioners is concerned, there is no dispute that the acquisition proceedings had been initiated in 1975 when 4(1) notification published on 16.7.75 and the declaration under section 6 was published on 13.7.78 which are being challenged in these writ petitions in the year 1994 after the lapse of 16 long years. Very ingenuously the learned counsel for the petitioner pleaded that when once the writ petitions are admitted or taken on file, the question of laches cannot be gone into.

36. I am unable to agree with the learned counsel for the petitioners. The Apex Court in the case of *Municipal Corporation of Greater Bombay v. Industrial Development Investment Co.*, : AIR 1997 SC482 has observed as follows:

'It is well settled law that when there is inordinate delay in filing the writ petition and when all steps taken in the acquisition proceedings have become final, the Court'

should be loath to quash the notifications. The High Court has, no doubt, discretionary powers under Article 226 of the Constitution to quash the notification under Section 4(1) and declaration under Section 6. But it should be exercised taking all relevant factors into pragmatic consideration. When the award was passed and possession was taken, the Court should not have exercised its power to quash the award which is a material factor to be taken into consideration before exercising the power under Article 226. The fact that no third party rights were created in the case is hardly a ground for interference. The Division Bench of the High Court was not right in interfering with the discretion exercised by the learned single Judge dismissing the writ petition on the ground of laches.'

37. From the above principle, it is very clear that considering the question of laches is the discretionary power of the court. It is well laid principle that such discretionary power can be exercised in a judicious manner. While doing so, the court is bound to take all relevant factors such as the conduct of the petitioners, their vendors etc., into pragmatic consideration.

38. In a recent judgment in the case of Municipal Council. Ahmednagar v. Shah Hyder Beig, : AIR 2000 SC671 the learned Judges of the Supreme Court have categorically held that after passing of the award no writ petition can be entertained, in the following words :-

'In any event, after the award is passed no writ petition can be filed challenging the acquisition notice or against any proceeding thereunder. This has been the consistent view taken by this Court and in one of recent cases C.Padma v. Dy. Secretary to the Government of T.N., : (1997)2SCC627 . This court observed as below: -

'The admitted position is that pursuant to the notification published under section 4(1) of the [Land Acquisition Act, 1894](#) (for short the Act') in GOR No.1392 Industries, dated 17.10.1962. total extent of 6 acres 41 cents of land in Madhavaram village. Saidapet Taluk, Chengalpattu District in Tamil Nadu was acquired under Chapter VII of the Act for the manufacture of Synthetic Rasium by Tvl. Reichold Chemicals India Ltd., Madras. The acquisition proceedings had become final and possession of the land was taken on 30.4.1964. Pursuant to the

agreement executed by the company, it was handed over to Tvl.Simpson and General Finance Co., which is a subsidiary of Reichold Chemicals India Ltd., it would appear that at a request made by the said company, 66 cents of land out of one acre 37 cents in respect of which the appellants originally had ownership, was transferred in G.O. MS.No.816 Industries, dated 24.3.1971 in favour of another subsidiary company, shri Rama Vilas Service Ltd., the 5th respondent which is also another subsidiary of the company had requested for two acres 75 cents of land; the same came to be assigned on leasehold basis by the Government after resumption in terms of the agreement in G.O.Ms.No.439 Industries, dated 10.5.1985. In G.O.Ms.No.546 Industries, dated 30.3.1986, the same came to be approved of. Then the appellants challenged the original G.O.Ms.No.1392 Industries dated 17.10.1962 contending that since the original purpose for which the land was acquired had ceased to be in operation, the appellants are entitled to restitution of the possession taken from them. The learned Single Judge and the Division Bench have held that the acquired land having already vested in the State, after receipt of compensation by the predecessor-in-title of the appellants, they have no right to challenge the notification. Thus the writ petition and the writ appeal came to be dismissed.'

39. Even though in view of the earlier principles laid down by the Supreme Court, the petitioners herein have no locus standi to challenge the acquisition proceedings and the writ petitions are liable to be dismissed on that ground, the question of laches is also being discussed since it has been raised by the learned counsel for the petitioners.

40. Before parting with the case, it may be worthwhile to point out the averments made in the affidavit which mislead the court for admitting the writ petitions and granting interim order. In paragraph 2 of the affidavit it is stated as follows:

'The subject matter of this writ petition has been already decided by this Hon'ble Court in favour of the persons similarly placed like the petitioner in W.P.No.1073 of 1987 dated 25.10.91 by following the Supreme Court decision reported in State of Tamil Nadu v. Mohammed Yousef, : [1991]3SCR375 .'

Already it has been discussed that the Writ Petition No.1073 of 1987 has not been filed by the persons similarly placed like the petitioners. The Writ Petition No.1073 of 1987 was filed by the landowners. The petitioners herein are the purchasers subsequent to the conclusion of the land acquisition proceedings. Hence the petitioners herein cannot be said to be the persons similarly placed like the petitioners in W.P.No.1073 of 1987.

41. Apart from that, the judgment referred to by the petitioners in the affidavit : [1991]3SCR375 had been held Per Incuriam by the Apex Court in a later judgment in State of Tamil Nadu v. L. Krishnan, : AIR 1996 SC497 Following the Judgment reported in State of Tamil Nadu v. L. Krishnan, : AIR 1996 SC497 this court had allowed number of writ appeals filed by the state Government and it may be worthwhile to mention the following writ appeals:- State of Tamil Nadu v. A.V.M. Murugan, (W.A.715/94) State of Tamil Nadu v. Ravichandran, (W.A.No.393 of 1993) and as such it is not open to the petitioners herein to rely upon the judgment reported in State of Tamil Nadu v. Mohammed Yousef, : [1991]3SCR375 . Hence on this ground also the writ petitions are liable to be dismissed.

42. The Writ Appeal Nos. 169 and 170 of 1997 filed by the State and the Housing Board against the order in W.P.No.1073 of 1987 were allowed by this court and as such the petitioners.

43. For the reasons stated above, this Court is of the view that the petitioners have no locus standi to maintain the writ petitions, after the acquisition proceedings having become final as well as on the ground of laches.

44. Accordingly the writ petitions are dismissed. No costs.