

Thulasi Ammal Vs. State of Tamil Nadu Represented by the Secretary to Government, Housing and Urban Development Department and ors.

Thulasi Ammal Vs. State of Tamil Nadu Represented by the Secretary to Government, Housing and Urban Development Department and ors.

SooperKanoon Citation : sooperkanoon.com/825366

Court : Chennai

Decided On : Jul-22-1994

Reported in : (1994)2MLJ662

Appellant : Thulasi Ammal

Respondent : State of Tamil Nadu Represented by the Secretary to Government, Housing and Urban Development Depar

Advocate for Pet/Ap. : Mr. M.S. Subramanian

Judgement :

ORDER

AR. Lakshmanan, J.

1. The petitioners in all the above writ petitions prayed for the issue of a writs of declaration declaring that the words 'on the date of publication of the Notification under Section 4(1)' of Section 23(1) of the Land Acquisition Act, 1894 (Central Act I of 1894), (hereinafter referred to as the Act), as unconstitutional as being contrary to the second proviso to Article 31-A of the Constitution of India, and consequently direct the 2nd respondent/Special Tahsildar, Land Acquisition, Madras Metropolitan Development Authority, to calculate and pay compensation for the lands of the petitioners on the basis of the market value prevailing on the

date of payment of compensation.

2. All these writ petitions are similar in facts and the contentions raised by the petitioners in their affidavits, and the arguments advanced by the learned Counsel for the petitioners are similar in facts and laws and hence all the writ petitions are taken up together for consideration.

3. All the writ petitions were originally filed with the following prayer:

To issue a writ of declaration or such other appropriate writ or order declaring that the words 'at the date of the publication of the notification under Section 4, Sub-section (1)' of Section 23(1) firstly of the Land Acquisition Act, 1894, as unconstitutional as being contrary to second proviso to Article 31-A of the Constitution and direct the 2nd respondent to calculate and pay compensation for petitioner's agricultural lands in Chengalpattu District, Saidapet Taluk, Mogappair village, which are agricultural lands under the petitioner's cultivation on the basis of the market value prevailing on the date of payment of compensation.

To amend the above prayer in the writ petitions, the petitioners filed W.M.P. Nos. 1083 of 1988 etc, and the prayer was amended as per orders of court in the respective writ miscellaneous petitions. The following prayer is included as an alternative prayer in the writ petitions:

Or in the alternative to issue a writ of declaration that the petitioner is entitled to compensation at not less than the market value as on the date of the award.

4. The short facts are as follows:

The Tamil Nadu Housing Board (hereinafter referred to as Board) requested the acquisition of an extent of 513.52 acres in Survey No. 194 etc., in Mogappair village for implementing the Ambattur Neighbourhood Scheme. The Draft Notification under Section 4(1) of the Act was approved by the Government in G.O.Rt. No. 261, Housing and Urban Development Department, dated 23.10.1975 and published at pages 3 to 11 of the supplement to Part II, Section 2 of the Tamil Nadu Government Gazette dated 12.11.1975. Under Section 3(c) of the Act, the Special Deputy Collector, Tamil Nadu Housing Board Schemes, Ashok Nagar,

Madras-83, Was authorised to perform the functions of Collectors under Section 5-A of the Act. The enquiry under Section 5-A of the Act was conducted by the Special Deputy Collector. Notices have been served on the land owner and interested persons. The notices were also published in the various offices as prescribed under the Rules framed under Section 55(1) of the Act. The enquiry was conducted under Section 5-A of the Act on different dates.

5. The objections of the land owners and interested persons were referred to the requisitioning body viz., Board in the letter of the Special Deputy Collector dated 30.1.1976 for his remarks. The Board in its letter dated 2.8.1978 has sent its remarks on the objections and stated that the Board has decided to exclude 81.81 acres totally and the remaining lands are required for the formation of Ambattur Neighbourhood Scheme. The gist of the remarks of the Board were communicated by the Special Deputy Collector to the objectors and their acknowledgment obtained and filed with the records of the Special Deputy Collector. The Government in G.O.Ms. No. 1520, Housing and Urban Development Department, dated 9.11.1978 passed orders to over-rule the objections and approved the draft declaration under Section 6 of the Act and the draft direction under Section 7 of the Act, which were published in the Tamil Nadu Government Gazette dated 10.11.1978. The Special Deputy Collector was appointed to perform the function of a Collector under the Act.

6. Meanwhile, in G.O.Ms. No. 1251, Housing and Urban Development Department, dated 13.7.1979, the Government created a Land Acquisition Cell in the Madras Metropolitan Development Authority for attending to the World Bank Aided Schemes and the 2nd respondent was authorised as the Land Acquisition Officer. In pursuance of this order, concerned files were transferred to the 2nd respondent. The Government in their letter No. 55721/A1/79-1, Housing and Urban Development Department, dated 19.11.1979 issued orders appointing the Special Tahsildar, Land Acquisition, to perform the functions of a Collector under Sections 3(c) and 7 of the Act. The said notification was published in the Tamil Nadu Government Gazette dated 30.1.1980.

7. According to the petitioners, they received notices under Section 9 and 10 of the Act in or about 1981 and the enquiry was also conducted in July, 1982 and that the declaration under Section 6 of the Act was made as early as 1978, but that the notice and enquiry under Sections 9 and 10 was issued and conducted belatedly. The petitioners would submit that the Notification under Section 4(1) of the Act having been made on 12.11.1975 and the declaration under Section 6 of the Act having been made on 10.11.1978, there is inordinate delay in the enquiry being conducted and orders passed. It is stated that after 1975 there is phenomenal increase in land prices, especially in and around the City of Madras. It is specifically contended that the prices prevailing as on the date of Section 4(1) notification viz., 12.11.1975 have absolutely no relevance to the market value of the lands as on the date of payment of the compensation since the market value is far more than the so called guide line value, and the actual price negotiated and fixed as between parties is still much more than value or price appearing in documents of sale. Hence it is submitted, that the market value that may be arrived at by the Land Acquisition Officer acting under the Act, and fixing under Section 23(1) of the Act viz., as on the date of Section 4(1) notification will certainly be illusory and arbitrary. It will not be the true compensation in its real sense, and fixing the market value as on the date of Section 4(1) notification viz., 12.11.1975 will certainly be defeating one of the major objectives of the Act and the acquisition itself will be confiscatory and without payment of full compensation.

8. The petitioners, as stated supra, filed petitions to amend the prayer viz., to declare that the petitioners are entitled to compensation at not less than the market value as on the date of the Award. This prayer has been made as an alternative prayer. The petitioners have also filed writ miscellaneous petitions to raise additional grounds. The following are the additional grounds raised:

(a) The publication of the substance of the notification had not been made simultaneously or even immediately of the notification in the Gazette. Such publication of the notification having not been made in the locality as required by the statute, the said statutory violation had rendered the entire acquisition proceedings invalid. The petitioner is also greatly prejudiced and the petitioner would be deprived of the property in pursuance of the invalid acquisition

proceedings. There had been an inordinate delay in the publication of the notification in the locality which delay is unreasonable and unexplained.

(b) The notification under Section 4(1) was for Tamil Nadu Housing Board for housing. The purpose, scheme and the requiring authority have since-become different and hence the proceedings are to be set aside.

(c) Rule 3(b) has not been observed and hence there had been no proper 5(A) enquiry.

(d) It is, therefore, prayed that this Court may be pleased to 'or in the alternative issue a writ of certiorari or any other writ or order or direction in the nature of a writ by calling for the records relating to the issue of Section 4(1) notification of the Act in respect of the petitioners' lands in No. 81, Mogappair Village, Saidapet Taluk, Chengalpattu District, and quash the same.

9. The respondents filed detailed counter-affidavits opposing the writ petitions. The following are the contentions in the main raised in the counter-affidavit filed by the Government of Tamil Nadu:

(a) There is no evidence for cultivation of the lands.

(b) Since the acquisition covers very large extent, there is some delay in passing the awards, which is due to various reasons viz., change of Land Acquisition Officer, obtaining clearance from the Authorised Officer, Land Reforms, etc.

(c) Any increase in the sale price of lands after the date of publication of notification under Section 4(1) of the Act cannot be considered as Section 23(1) of the Act contemplates determination of the amount of compensation to be awarded for the land acquired on the date of publication of the notification under Sec.4(1) of the Act.

(d) Section 23(1) of the Act contemplates the determination of the market value of the lands acquired as on the date of publication of the Notification under Section 4(1) of the Act and therefore sales statistics have been gathered for a period of three years preceding the date of publication of the notification.

(e) The Act contemplates fixation of market value only as on the date of notification under Section 4(1) of the Act.

(f) It is not correct to state that the fixation of market value as on the date of Section 4(1) Notification after the lapse of six years would render the compensation illusory and that the Second Part of Section 23(1) of the Act is hit by the Second Proviso to Article 31-A of the Constitution and therefore unconstitutional.

(g) Though it cannot be disputed that there has been an increase in the price of land, yet, it is a sweeping statement not supported by data.

10. During the pendency of the writ petitions, T. Sathiadev, J., passed the following order on 16.12.1982 in W.M.P. Nos. 11482 of 1982, etc., in W.P. No. 7624 of 1982 etc. batch.

In all these writ petitions, petitioners claim that by virtue of Article 31-A of the Constitution, the computation of compensation could be with reference to the market value that prevailed on the date of the award and not on the day when Section 4(1) Notification was made. He relies upon the decision in *S. Suryanarayana v. State of Andhra Pradesh* (1982) 1 An. W.R. 315, wherein a portion of Section 23(1) of the Land Acquisition Act was struck down as unconstitutional, it being contrary to Second proviso to Article 31-A of the Constitution. Therefore when the petitioners are only concerned with the quantum of compensation awardable for the lands, which have been acquired, and when the petitioners make it quite clear that they are not opposed to the acquisition that has been made, and in some of the petitions having been stated that possession had been given this Court considers that there need be no stay of the taking of possession of the lands pursuant to the acquisition proceedings.

Regarding the passing of the awards, here again, there could be no restraint, but any award passed would be subject to the ultimate result in the writ petitions. Petitioners having sought for the relief that the quantum of compensation should be differently determined relying on Article 31-A of the Constitution the awards so passed pending disposal of the writ petitions would be subject to such suitable

directions which this Court may grant while disposing of the writ petitions. If it be held that the compensation would have to be computed as claimed by the petitioners the awards passed would have no legal force. Therefore while passing the award, the Land Acquisition Officer should indicate that the awards so passed are subject to the disposal of the writ petitions. On such awards passed, it is for the petitioners to seek for reference within the time permitted under the Act. Later on it would not be open to them to plead that because of the pendency of the writ petitions, they are under the impression that no references need be made on time. The decision rendered by court on such references made would also be subject to the ultimate result of the writ petitions. In the light of the directions above given, these writ miscellaneous petitions stand dismissed.

[Italics in the above passage is ours]

11. It is, thus, quite clear from the above order that the petitioners are not opposed to the acquisition of their lands but only interested in getting more compensation with reference to the market value on the date of the award and not on the date when Section 4(1) notification was made. It is also further clear from the above order and from the respective counter-affidavits filed in the writ petitions, that the lands were already entered upon by obtaining the consent of the petitioners. It is stated in the counter-affidavit filed by the Government of Tamil Nadu in W.P. Nos. 8263 and 8264 of 1982 that the subject-matter of lands in those writ petitions have already been taken possession of by the respondents and that the same is now put to use for water treatment plant for the Ambattur Neighbourhood Scheme. It is also seen from paragraph 6 of the counter-affidavit of the Government of Tamil Nadu in W.P. Nos. 7624 to 7628 of 1982, that the petitioner's land in W.P. No. 7627 of 1982 was taken possession of by the respondents by obtaining his consent and the same is also put to use for water treatment plant for the Ambattur Neighbourhood Scheme.

12. We have heard Mr. M.S. Subramanian for the petitioners, Mr. P. Sathasivam, Special Government Pleader for the State of Tamil Nadu Mr. P. Narasimhan, Additional Central Government Standing Counsel for the Union of India and Mr. N. Kannadasan for the Board.

13. According to Mr. M.S. Subramanian, the petitioners are entitled for compensation for the agricultural lands under their personal cultivation on the basis of the market value prevailing on the date of payment of compensation. At the time of filing the writ petitions, awards were not passed in all cases and W.M.P. No. 11478 of 1982, etc., were filed for stay of all further proceedings. Interim stay was granted initially. When the said petitions came up before T. Sathiadev, J., the learned Judge observed that the writ petitions were filed claiming compensation under Article 31-A of the Constitution and hence there need be no stay and that the awards passed pending disposal of the writ petitions will be subject to the ultimate result of the writ petitions and that while disposing of the writ petitions if it be held that the compensation would have to be computed as claimed by the petitioners, the awards passed would have no legal force. Finally the learned Judge dismissed all the writ miscellaneous petitions with the said observation. This Court also permitted the petitioners to raise additional grounds in W.M.P. No. 13560 of 1984 etc. and to raise the alternative prayer viz., for the relief of declaration that the petitioners are entitled to compensation at not less than market value as on the date of the award.

14. In support of his contention Mr. M. Subramanian invited our attention to Section 23(1) of the Act and Article 31-A of the Constitution wherein Second Proviso was introduced by the 17th Amendment in 1964, which requires payment of compensation at the rate of not less than the market value thereof for any agricultural land within the ceiling limit when personal cultivation is done. 15. Section 23(1) of the Act reads as follows:

23. Matters to be considered in determining compensation:

(1) In determining the amount of compensation to be awarded for the land acquired under this Act, the court shall take into consideration first the market value of the land at the date of the publication of the notification under Section 4, Sub-section (1):

Secondly, the damage sustained by the person interested, by reason of the taking of any standing crops or trees which may be on the land at the time of the Collector's taking possession thereof:

Thirdly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of severing such land from his other land:

Fourthly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings,

Fifthly, if, in consequence of the acquisition of the land by the Collector the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change; and

Sixthly, the damage (if any) bona fide resulting from diminution of the profits of the land between the time of the publication of the declaration under Section 6 and the time of the Collector's taking possession of the land.

Second Proviso to Article 31-A of the Constitution runs as follows:

XXXX XXXX

Provided further that as where any law makes any provision for the acquisition by the State of any estate and where any land comprises therefor is held by a person in his personal cultivation, it shall not be lawful for the State to acquire any portion of such land as is within the ceiling limit applicable to him under any law for the time being in force or any building or structure thereon or appurtenant thereto, unless the law relating to the acquisition of such land, building or structure provides for payment of compensation at a rate which shall not be less than the market value thereof.

Section 11(1) of the Act reads as follows:

11. Enquiry and award by Collector, (1) on the day so fixed or on any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objections (if any) which any person interested has stated pursuant to a notice given Section 9 to the measurements made under Section 8, and into the value of

the land at the date of the publication of the notification under Section 4, Sub-section (1) and into the respective interests of the persons claiming the compensation and shall make an award under his hand of-

(i) the true area of the land;

(ii) the compensation which in his opinion should be allowed for the land; and

(iii) the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom, or of whose claims, he has information, whether or not they have respectively appeared before him:

16. According to Mr. M.S. Subramanian, if Section 23(1) of the Act has to be construed as requiring payment of compensation as on the date of Section 4(1) notification it would offend Article 31-A, proviso 2 of the Constitution. The expression 'compensation' is not defined under the Act. The preamble to the Act serves two purposes viz., (i) to acquire; and (ii) to determine and pay compensation.

17. Our attention was drawn to the judgment of the Supreme Court reported in *State of West Bengal v. Mrs. Bella Banerji* : [1954]1SCR558 , wherein the Supreme Court has observed that the legislature is given the discretionary power of laying down the principles which should govern the determination of the amount to be given to the owner for the property appropriated, such principles must ensure that what is determined as payable must be compensation, that is, just equivalent of what the owner has been deprived of, and that the fixing of an anterior date for the ascertainment of value, which might have no relation to the value of the land when it is acquired, may be many years later cannot be regarded as arbitrary and that any principle for determining compensation, which denies to the owner this increment in value, cannot result in the ascertainment of the true equivalent of the land appropriated. Placing strong reliance on the above judgment, Mr. M.S. Subramanian contended that the fixing of market value at an earlier date is opposed to Article 31(2) of the Constitution.

18. Mr. M.S. Subramanian next invited our attention to the decision reported in *The State of Madras v. D. Namasivaya* : [1964]6SCR936 , Para 5 relied on by the learned Counsel for the petitioners reads thus:

Counsel for the State of Madras relying upon the following observation of Patanjali Sastri, C.J. in *Mrs. Bela Banerjee's case* : [1954]1SCR558 :

The fixing of an anterior date for the ascertainment of value may not, in certain circumstances, be a violation of the constitutional requirement as, for instance, when the proposed scheme of acquisition becomes known before it is launched and prices rise sharply in anticipation of benefits to be derived under it, but the fixing of an anterior date, which might have no relation to the value of the land when it is acquired, maybe, many years later, cannot but be regarded as arbitrary'.

submitted that a law which merely fixes the market value on a date anterior to the date on which the owner is expropriated of his land, as determinative of the market value on which the compensation is to be based, cannot without further enquiry be regarded as infringing Article 31(2) of the Constitution. In our view this observation cannot assist the State of Madras in saving the provisions of Madras Act XI of 1953 from the vice of infringing the constitutional guarantee under Article 31(2) of the Constitution.

19. The decision reported in *R. Vajiravelu Mudaliar v. Special Deputy Collector* : [1965]1SCR614 , was next cited by the learned Counsel for the petitioners, wherein the Supreme Court has held under Article 31(2) of the Constitution before the Constitution (Fourth Amendment) Act, 1955, a person whose land was acquired was entitled to compensation i.e., a just equivalent' of the land of which he was deprived and that a Legislature in making a law of acquisition or requisition shall provide for a just equivalent of what the owner has been deprived of or specify the principles for the purpose of ascertaining the just equivalent of what the owner has been deprived of. The Supreme Court has also relied on the judgments reported in *State of West Bengal v. Mrs. Bella Banerji* : [1954]1SCR558 and *The State of Madras v. D. Namasivaya* : [1964]6SCR936 referred to supra in this judgment.

20. Learned Counsel for the petitioners next cited the decision reported in *Union of India v. The Metal Corporation of India Limited* : [1967]1SCR255 , to show that under Article 31(2) of the Constitution, no property shall be compulsorily acquired except under a law which provides for compensation for the property acquired and either fixes the amount of compensation or specifies the principles on which and the manner in which compensation is to be determined and given. In the above cited two cases viz. *R. Vajiravelu Mudaliar v. Special Deputy Collector* : [1965]1SCR614 and *Union of India v. The Metal Corporation of India Limited* : [1967]1SCR255 , the decision reported in *State of West Bengal v. Mrs. Bella Banerji* : [1954]1SCR558 has been followed.

21. In the decision reported in *R.C. Cooper v. Union of India* : [1970]3SCR530 , two questions arose for determination before the Supreme Court viz., what is the true meaning of the expression 'compensation' as used in Article 31(2) of the Constitution and what is the extent of the jurisdiction of the court when the validity of a law providing for compulsory acquisition of property for a public purpose is challenged. The Supreme Court has also relied on the earlier dictums of the Supreme Court in *State of West Bengal v. Mrs. Bella Banerji* : [1954]1SCR558 , *The State of Madras v. D. Namasivaya* : [1964]6SCR936 and other judgments. The Supreme Court in paragraphs 101 and 102 observed as follows:

We are unable to hold that a principle specified by the Parliament for determining compensation of the property to be acquired is conclusive. If that view be accepted, the Parliament will be invested with a charter of arbitrariness and by abuse of legislative process, the constitutional guarantee of the right to compensation may be severely impaired. The principle specified must be appropriate to the determination of compensation for the particular class of property sought to be acquired. If several principles are appropriate and one is selected for determination of the value of the property to be acquired, selection of that principle to the exclusion of other principles is not open to challenge, for the selection must be left to the wisdom of the Parliament.

The broad object underlying the principle of valuation is to award to the owner the equivalent of his property with its existing advantages and its potentialities. Where

there is an established market for the property acquired the problem of valuation presents little difficulty. Where there is no established market for the property, the object of the principle of valuation must be to pay to the owner for what he lost, including the benefit of advantages present as well as future, without taking into account the urgency of acquisition, the disinclination of the owner to part with the property, and the benefit which the acquirer is likely to obtain by the acquisition. Under the Land Acquisition Acts compensation paid is the value to the owner together with all its potentialities and its special adaptability if the land is peculiarly suitable for a particular use, if it gives an enhanced value at the date of acquisition.

The Supreme Court has also discussed in paragraph 103 the various methods of determination of compensation.

22. It is contended by the learned Counsel for the petitioners that under the Act, issue of 4(1) Notification is only a proposal to acquire expressing the need of the Government and passing of the award is only an offer of price by the Government and when possession is taken under Section 16 of the Act, the land vests in the Government and therefore, the time when the award is passed and possession is taken is the time of expropriation or acquisition. Therefore, to comply with Article 31-A, proviso 2 of the Constitution as well as Section 11 of the Act, the compensation is to be determined at least as on the date of passing of the award. He would further urge that if Section 23(1) of the Act firstly has to be construed as requiring payment of compensation as on the date of Section 4(1) notification then, it clearly offends Article 31-A, proviso 2 of the Constitution and therefore will be unconstitutional.

23. Mr. M.S. Subramanian cited the judgment of a learned single Judge of the Andhra Pradesh High Court reported in *Sompala Suryanarayana v. State of Andhra Pradesh* (1982) 1 An. W.R. 315, wherein, the learned Judge held Section 23(1) of the Act as unconstitutional. The learned Judge observed that the petitioners therein are entitled to be paid market value prevailing not on the date of Section 4(1) notification but at the market rate prevailing just on the date of the actual payment. On appeal, in *Singareni Collieries Co. Limited v. Satyanarayanamoorthy* (1984) 2 An.W.R. 253, the constitutional validity of Section

23(1) of the Act was upheld but the notification was quashed on other grounds. The appeal judgment proceeds to uphold Section 23(1) of the Act on the two grounds viz., (1) Section 23(1) of the Act requires payment of compensation fixing the market value as on the date of Section 4(1) notification: and (2) The Act is a pre-constitutional enactment and is saved by Article 31(5) of the Constitution.

24. Mr. M.S. Subramanian, learned Counsel for the petitioners, contended that this view of the Andhra Pradesh High Court may not be correct in view of the following:

(i) Article 31-A of the Constitution is an independent provision and that the same is not controlled by Article 31(5) of the Constitution,

(ii) Article 31-A of the Constitution even now continues in the Constitution though Article 31 in entirety has been deleted (inclusive of Article 31(5)).

25. Proceeding further, Mr. M.S. Subramanian would contend that in the case on hand, Section 4(1) notification was made when Article 31 of the Constitution was very much in the Constitution and hence the notification which is law under Article 13 of the Constitution, will certainly offend Article 31-A and hence is unconstitutional and that Article 31-A, proviso 2 is itself a fundamental right and it is higher than that of Article 31(2) as found in the decision reported in *Dattatraya Govind Mahajan v. State of Maharashtra* : [1977]2SCR790 . Elaborating the said statement, the learned Counsel for the petitioners contended that what is saved by Article 31-A(1) of the Constitution is only such enactments which are inconsistent with Articles 14 and 19 and not inconsistent with Article 31-A of the Constitution and therefore, any Act or provision offending Article 31-A, proviso 2 is unconstitutional. Hence, according to the learned Counsel, Section 23(1) firstly of the Act has to be considered as requiring payment of compensation on the date when the acquisition takes place i.e., at about the time of passing of the award or taking possession.

26. Proviso 2 to Article 31-A of the Constitution is an exception to Article 31-A(1) since, according to the learned Counsel for the petitioners, Article 31-A(1) is itself an exception to Article 13 of the Constitution and therefore, Article 31-A, proviso 2, which is an independent fundamental right, is not saved by Article 31-A(1) or

Article 31(5) of the Constitution. The petitioners' lands, Mr. M.S. Subramanian would submit, being within the ceiling limit and under personal cultivation when acquired, the State is bound to pay compensation as on the date of the award as claimed in the writ petitions.

27. The constitutionality of Section 23(1) of the Act was questioned in two cases viz. *Aflatoon v. Lt. Governor of Delhi* : [1975]1SCR802 and *Ratni Devi v. Chief Commissioner, Delhi* : AIR 1975 SC1699 . The attack was, that Section 23(1) of the Act was an unreasonable restriction on the right to property guaranteed by Article 19(1)(f) read with Article 31(2) of the Constitution. The validity of Section 23(1) of the Act was upheld in both the cases. The Supreme Court, while considering the challenging observed in the former case : [1975]1SCR802 as follows:

When Section 23 is not liable to be challenged on the ground that the compensation provided by its provision is inadequate in view of the provisions of Article 31(5) there is no point in the contention that it can be challenged for that very reason on the basis that it imposes unreasonable restriction upon a citizen's right to hold and dispose of property. Although Section 23 of the Act can be challenged on the ground that it violates the fundamental right of a citizen to hold and dispose of property under Article 19(1)(f) the challenge would practically be limited to the question of procedural reasonableness. But Section 23 does not deal with procedure and cannot, therefore, suffer from any procedural unreasonableness.

28. In the latter decision reported in *Ratni Devi v. Chief Commissioner, Delhi* : AIR 1975 SC1699 , the Supreme Court while upholding the constitutional validity of Section 23(1) of the Act observed in paragraph 9 as follows:

The main contention of the petitioners and the appellants is that compensation which is to be paid with reference to the value of the property on the date of the notification is an unreasonable restriction to hold and dispose of property. It was submitted that compensation should be paid with reference to the value of the property on the date possession of the property was taken. This question has been answered in the judgment in *Aflatoon's case* : [1975]1SCR802 . Mathew, J.,

speaking for the Court said that Article 31(5) precludes such a challenge. Further, Section 4(3) of the Land Acquisition Amendment and Validation Act, 1967, provided for payment of interest at 6 per cent of the market value after the expiry of three years from the date of the notification under Section 4 to the date of payment of compensation. Again, Section 24 of the Act provides that any outlay or improvement on, or disposal of the land acquired, commenced, made or effected without the sanction of the Collector after the date of the publication of the notification shall not be taken into consideration by the court in awarding compensation. Therefore, any outlay or improvement made with the sanction of the Collector after the date of the notification will be taken into consideration in awarding compensation.

29. The above two passages were also relied on by Mr. P. Sathasivam learned Special Government Pleader in support of his contention that Section 23 of the Act is not liable to be challenged on the ground that the compensation provided is inadequate in view of Article 31(5) of the Constitution and that it violates the fundamental rights of a citizen to hold and dispose of the property under Article 19(1)(m) of the Constitution.

30. Mr. M.S. Subramanian, learned Counsel for the petitioners, further urged that under Article 31-A, proviso 2, on the ground of reinstatement or on the ground of the Act itself providing for payment of compensation as on the date of acquisition and the Act not prohibiting payment of market value on the date of expropriation, the petitioners are entitled to be paid compensation as on the date of award. According to him, Section 23(1) of the Act does not require payment of compensation as on the date of Section 4(1) notification for the following reasons:

Section 11(1) of the Act, according to the learned Counsel for the petitioners, says, the Collector shall make an award under his hand, of the compensation which in his opinion should be allowed for the land. Section 15 of the Act says that in determining the amount of compensation, the Collector shall be guided by the provisions contained in Sections 23, 24 and 24-A of the Act. Therefore, according to the learned Counsel in determining the amount of compensation to be awarded for the land to be acquired under the Act, the court shall take into consideration

first the market value of the land on the date of publication of the notification under Section 4(1) of the Act. He contended that Section 23(1) of the Act does not say- 'pay or determine compensation as on the date of Section 4(1) notification.' It only says that the court shall take into consideration, which does not mean that other things should not be taken into consideration, for instance, general rise in prices is a factor which can be taken into consideration and it is not prohibited by any provision.

31. According to Mr. M.S. Subramanian, Section 24 of the Act says that any increase to the value of the land acquired likely to accrue from the use to which it will be put when acquired and does not prevent or prohibit consideration of the general rise in prices. Therefore, he contended that the Collector can in his opinion take into consideration the general rise in prices and allow compensation at the market value as on the date of award or possession and that the expression 'guided' and shall take into consideration in Sections 15 and 23 of the Act are synonyms and would mean that the enumerated matters have to be considered and that it does not prevent other matters being considered. Section 23(1)(a) of the Act introduced by the Amending Act 68 of 1984 provides for payment of 12% for the period from the date of Section 4(1) notification to the date of award, which is applicable to acquisitions after 1984 as well, and that Section 23(1)(f) of the Act is held to be not retrospective. Secondly, 12% amount of Rs. 210 per cent will not be equivalent to the general rise in prices over the period from 12.11.1975 to 1982 or 1983, the date of writ petition or the award. The increase of prices in this period is phenomenal especially after 1976-78 and hence the market value as on the date of award or possession should be given to the petitioners.

32. It is further contended that the publication of the substance of the notification has not been made simultaneously or atleast immediately after the notification in the Gazette. Such publication of the notification not having been made in the locality as required by the statute, the statutory violation has rendered the entire acquisition proceedings invalid and that there had been inordinate delay in the publication of the notification in the locality, which delay is unreasonable and unexplained. Next it is contended that Rule 3(b) has not been observed and there had been no proper Section 5-A enquiry.

33. According to Mr. M.S. Subramanian, there is unreasonable delay in completing the acquisition proceedings, which is arbitrary and colourable exercise of such power vitiating the entire proceedings and that the local publication alleged to have been effected on 17.12.1975 in compliance with Section 4(1) of the Act disables the persons to put forth their objections under Sec.5-A within thirty days and that the Collector has not forwarded the objections to the requiring authority/Board or Madras Metropolitan Development Authority, which will amount to non-compliance of Rule 3(b). The requisitioning authority's remarks were not served on the interested persons and no enquiry was held after the remarks of the requisitioning authority. Hence Rule 3(b) not complied with, which vitiates the entire proceedings. Lastly, it was contended that the acquisition was originally intended for Board, which was the requiring authority but in the middle it was changed over to Madras Metropolitan Development Authority, another requiring authority, for a different scheme. This change over is before the completion of the acquisition proceedings which also vitiates the entire proceedings. The above are the contentions raised by Mr. M.S. Subramanian learned Counsel for the petitioners.

34. Mr. P. Narasimhan, learned Additional Central Government Standing Counsel, argued on behalf of the Union of India. The Union of India has also filed a counter-affidavit in regard to the constitutional validity of the later part of Section 23(1) of the Act. According to Mr. P. Narasimhan, the contention of the learned Counsel for the petitioners cannot at all be accepted for the reasons stated in the counter-affidavit of the Union of India.

35. Mr. P. Sathasivam, learned Special Government Pleader has contended that the entire procedure in acquiring the land has been scrupulously followed and there is no violation of any of the provisions of the Act. Learned Counsel for the respondents have also produced the relevant files and we have also perused the same.

36. In all the writ petitions, Section 4(1) notification was published in the Tamil Nadu Government Gazette on 12.11.1975 and Form 3 notice was served on 27.12.1975. Section 5-A enquiry notice was served on the petitioners on 27.12.1975, 28.12.1975 and 5.1.1976. The date of enquiry was fixed on 20.1.1976

and 22.1.1976. The objections submitted by the petitioners were communicated to the requisitioning body in all the cases on 30.1.1976. The remarks were received from the requisitioning body on 2.8.1978 and the same was communicated to the land owners on 23.8.1978. In all the cases, orders were passed on 30.8.1978.

37. Section 6 declaration in G.O.Ms. No. 1250, Housing and Urban Development Department, dated 9.11.1978 was published in the Tamil Nadu Government Gazette on 10.11.1978 in all the cases. Sections 9(1) and 9(3) notices were sent on 25.5.1982 in W.P. Nos. 6628 of 1993 and 10771 of 1982 and served on the parties on 28.5.1982. These notices were sent in W.P. Nos. 7624, 8263 and 10643 of 1982 on 23.10.1981 and served on 7.11.1981. These notices were sent in W.P. Nos. 7625 and 7626 of 1982 on 21.4.1980 and 25.5.1982 and served on 28.4.1980 and 28.5.1982. These notices were sent W.P. Nos. 7627 and 8264 of 1982 on 20.4.1982 and served on 24.4.1982. These notices were sent on 10.3.1982 in W.P. No. 7628 of 1982 and served on 12.3.1982. Similarly, these notices were sent on 13.10.1981 and served on 7.11.1981 in W.P. Nos. 8263 and 10643 of 1982.

38. In regard to the acquisition of land, in W.P. No. 6628 of 1983, no enquiry was conducted and award passed because of the stay granted by this Court of all further proceedings in W.M.P. No. 10017 of 1983 in W.P. No. 6628 of 1983 dated 1.8.1983. Whereas the enquiry was conducted on 25.11.1981 and 7.12.1981 and Award No. 12 of 1983 was passed on 29.7.1983 in W.P. No. 7624 of 1982 for Rs. 72,507.50 and notice under Section 12(2) was sent on the same day. Possession in this case was taken on 8.8.1983.

39. In W.P. Nos. 7625 and 7626 of 1982 the award enquiry was held on various dates commencing from 17.6.1982 and Award No. 9 of 1983 was passed on 20.6.1983 and the award amount was fixed at Rs. 26,615 and Rs. 10,743 respectively and notice under Section 12(2) was sent on 20.6.1983 and possession taken on 1.7.1983.

40. In W.P. Nos. 7627 and 8264 of 1982, the enquiry notice was sent on 20.4.1982 and Award No. 6 of 1983 for Rs. 24,014.25 and Rs. 19,969.75 respectively was passed on 23.3.1983 and the notice under Section 12(2) was

sent on 24.3.1983, i.e., after the vacation of the interim stay granted by this Court on 16.12.1982.

41. In W.P. No. 7628 of 1982, notice for award enquiry was sent on 7.4.1982 and Award No. 3 of 1984 dated 15.3.1984 for Rs. 28.75 plus Rs. 101-20 was passed and notice under Section 12(2) was sent on the same day. Possession was taken on 10.4.1984.

42. In W.P. No. 8263 of 1982, the notice was sent on 25.11.1981 and Award No. 12 of 1983 dated 29.7.1983 for Rs. 22,942.50 was passed and notice under Section 12(2) was sent on the same day and possession taken on 16.9.1983 and delivered to the requisitioning body on 7.10.1983.

43. In W.P. No. 10643 of 1982, the award enquiry notice was sent on 18.8.1981 and Award No. 20 of 1983 dated 26.10.1983 for Rs. 86,261.50 was passed and notice under Section 12(2) was sent on the same day. Possession was taken on 26.10.1983 and 11.1.1984.

44. Thus, it is seen from the above that the enquiry under Section 5-A of the Act was conducted by the Special Deputy Collector after observing all the formalities. Individual notices have been served on the land owners and interested persons. He has also published notices in the various officers as prescribed under the Rules framed under Section 55(1) of the Act and conducted the 5-A enquiry on the dates mentioned above. It is also seen from the records that the objections of the land owners and interested persons were referred to the requisitioning body for their remarks and on receipt of the remarks on the objections, the Board has in fact decided to exclude 81.81 acres totally and decided to acquire the remaining lands for the formation of Ambattur Neighbourhood Scheme. The gist of the remarks of the Board was communicated by the Special Deputy Collector to the objectors and their acknowledgments were also obtained. The Government in G.O.Ms. No. 1520, Housing and Urban Development Department, dated 9.11.1978 passed orders over-ruling the objections and approving the draft declaration under Section 6 of the Act and the draft direction under Section 7 of the Act, which were again published in the Tamil Nadu Government Gazette dated 10.11.1978. Hence the contention of Mr. M.S. Subramanian, learned Counsel for

the petitioners, that there is unreasonable delay in completing the land acquisition proceedings cannot at all be countenanced in view of the production of the records and the satisfactory completion and compliance of the procedure contemplated under the Act as could be seen from the records produced.

45. Likewise, the other contention of Mr. M.S. Subramanian, learned Counsel for the petitioners, is also liable to be rejected since, as could be seen from the records, the publication in the locality has also been done in all these cases. Hence, we do not propose to refer to the judgments cited by Mr. M.S. Subramanian reported in Appalamurthy v. State : AIR 1981 AP278 , Sree Vengeeswarar Alaga Perumal Devasthanam v. State of Tamil Nadu : (1984)2MLJ427 , Narindrajit Singh v. State of U.P. : [1973]2SCR698 , State of Mysore v. Abdul Razak Sahib : [1973]1SCR856 .

46. Another contention of Mr. M.S. Subramanian in regard to the non-compliance of Rule 3(b) is also liable to be rejected since it is clearly stated in the counter-affidavit and also seen from the records, that the objections were communicated to the requisitioning body was again communicated to the landowners on the Jates specified above and orders were passed immediately in all the cases. Hence, there is no need to refer to the unreported judgment cited by Mr. M.S. Subramanian in W.P. No. 10351 of 1982 etc batch dated 6.1.1988.

47. Next we will consider the contention of Mr. M.S. Subramanian that the acquisition though originally intended for Board, which was the requiring authority, was in the middle changed over to Madras Metropolitan Development Authority, another requiring authority, for a different scheme and hence such a change over in the middle is bad and as such the proceedings are liable to be set aside. We are unable to appreciate the said contention. It is true that the declaration under Section 6 of Act was published on 10.11.1978 and the Special Deputy Collector for Land Acquisition Tamil Nadu Housing Board was notified under Section 7 of the Act as the Collector. According to the State, as the Special Deputy Collector had a large number of scheme on hand, the Government have decided to have a different Land Acquisition Cell in the Madras Metropolitan Development Authority and therefore, by G.O.Ms. No. 1251, Housing and Urban Development

Department, dated 13.7.1979, sanctioned a Special Tahsildar as Land Acquisition Officer. Subsequently, the Notification under Sections 3(c) and 7 of the Act was approved by the Government in their letter dated 10.11.1979. The said notification was published in the Tamil Nadu Government Gazette dated 28.11.1979.

48. Pursuant to the change, the officers implementing the Tamil Nadu Urban Land (Ceiling and Regulation) Act and the Tamil Nadu Land Reforms Act have to give clearance before the lands could be acquired under the Act. The acquisition was completed and 168.82 acres in Blocks 7 to 9, 12 (part) and 6 (part) were acquired. We are of the view that the Government is always at liberty to change the machinery for proceeding with the acquisition proceedings. In the instant case, the public purpose mentioned in the original notification for and on behalf of the Board and now by the Madras Metropolitan Development Authority, is one and the same viz., implementing the Ambattur Neighbourhood Scheme. The purpose of land acquisition is not at all changed and the proposed acquisition for and on behalf of the Madras Metropolitan Development Authority is one and the same. Continuance of the acquisition proceedings is sought to be done by the Madras Metropolitan Development Authority for a public work viz., for Ambattur Neighbourhood Scheme wholly connected with the original purpose for which the lands were notified for acquisition. This apart the Government have decided to create a seprate Land Acquisition Cell in the Madras Metropolitan Development Authority as the Special Depty Collector Land Acquisition, Tamil Nadu Housing Board had large number of schemes on hand. Hence, this contention of Mr. M.S. Subramanian also fails.

49. Now we come to the principal contention of Mr. M.S. Subramanian. According to him, there is phinominal increase in the land price especially in and around (he City of Madras and that prices prevailing as on the date of Section 4(1) notification, have absolutely no relevance to the market value of the land as on the date of payment of compensation and that the market value that may be arrived at by the Land Acquisition Officer fixes the value under the provisions of Section 23(1) of the Act viz., as on the date of Section 4(1) notification which will certainly be illusory and arbitrary, which may not be true compensation in its real sense and that the same will certainly defeat one of the major objectives of the Act and

therefore the acquisition itself will be confiscatory and without payment of full compensation.

50. As stated supra, the learned Counsel for the petitioners invited our attention to the relevant provisions viz., Section 23(1) of the Act and Article 31-A of the Constitution which, according to him, had been inserted to ensure payment of compensation which is not less than the market value, and that the market value contemplated therein is the market rate on the date of payment of compensation and not on any earlier date. Therefore he contended that the State is obliged constitutionally to pay compensation as on the date of payment of compensation and not the market value prevailing on an anterior date (date of Section 4(1) notification, which is dated 12.11.1975). He also contended that the second part of Section 23(1) of the Act is hit by the second proviso to Article 31-A of the Constitution and therefore unconstitutional so far as the petitioners' agricultural lands are concerned, in which they are doing personal cultivation. According to him, the second proviso to Article 31-A of the Constitution, introduced by the 17th Amendment to the Constitution, renders the acquisition of the petitioners' agricultural lands under their personal cultivation, by payment of compensation for such agricultural lands at a rate less than the market value prevailing on the date of payment of compensation, unconstitutional. Article 31-A of the Constitution obliges the State to pay the compensation for the agricultural lands acquiring on the basis of the market value prevailing on the date of payment and to fix the market value as on the date of Section 4(1) notification would make the fundamental right guaranteed under the Constitution under Article 31-A, second proviso illusory. We are unable to agree with the contention of Mr. M.S. Subramanian for the reasons stated infra.

51. Clause 1 of Section 23(1) of the Act provides for the determination of the market value of the land on (the date of the notification issued under Section 4(1) of the Act. The land acquisition proceedings are initiated with the publication of the notification under Section 4(1) of the Act to the effect that the land in a locality is needed or is likely to be needed for a public purpose. The issue of such a notification often gives rise to profiteering and speculation in the land market. Public purposes like urbanization, setting up of large institutions, industrial

undertakings and so on tend to boost sharply prices of land in the locality to create artificial evidence for higher market prices on the basis of which compensation may be determined if any date later than the date of preliminary notification under Section 4(1) is chosen for this purpose.

52. As rightly contended by Mr. P. Narasimhan, learned Additional Central Government Standing Counsel Mr. P. Sathasivam, learned Special Government Pleader, and Mr. N. Kannadasan, learned Counsel for the Board, the provision has been in existence since 1923 and has stood the judicial scrutiny and test of time. Before 1923, the date of reference for the purpose of determination of the market value of the land was actually the date of publication of the declaration under Section 6 of the Act, viz. the market value of the land used to be determined much after the notification under Section 4(1) of the Act had been published. But, in 1923, the reference date for this purpose was modified through an amendment and it was made as on the date of the publication of the notification under Section 4(1) of the Act. One of the considerations that led to the amendment in 1923 was the tendency of the land prices to rise sharply after the issue of preliminary notification under Section 4(1) of the Act. In order to compensate for the loss arising from escalation in land prices that took place in normal cases, there is already a provision under Section 23(A) of the Act for payment of an additional amount at 12% per annum of the market value of the land from the date of publication of the notification under Section 4(1) of the Act to the date of award of the Collector or the date of taking over possession of land, whichever is earlier. This provision, in our opinion, takes care of the normal rise in land prices.

53. Apart from the above, solatium at 30% of the market value is also paid under Section 23(2) of the Act to the land owner in consideration of the compulsory nature of the acquisition besides interest at 9% per annum for the first year and at 15% per annum for the period thereafter for delayed payments under Section 34 of the Act. The above provisions make the compensation more realistic and just and are considered to provide much better opportunities to the land owners in finding alternative land or source of livelihood. In our opinion, fixation of market value of the land under Section 4(1) of the Act is neither illusory nor unreal nor it makes the fundamental right guaranteed under Article 31-A of the Constitution illusory, as

contended by the learned Counsel for the petitioners. It is also denied by the respondents that the later part of Clause (1) of Section 23(1) of the Act i.e., at the date of the publication of the notification under Section 4, Sub-section (1) is null and void or violative of or hit by or is contrary to the second proviso to Article 31-A of the Constitution. In our view, the acquisition is for a public purpose and it is for the benefit of the public and in such circumstances, the challenge of the relevant provisions fixing the market value of the land as on the date of the notification, is without any basis and the same cannot be characterised as illusory and contrary to Article 31-A of the Constitution.

54. After the implementation of the Anna Nagar Scheme in 1966, the increase in the price of lands in this part is reflected in the sale of lands in the area and such sales are taken into consideration in fixing the market value of the lands acquired. Any increase in the sale price of lands after the date of publication of notification under Section 4(1) of the Act cannot be considered as Section 23(1) of the Act contemplates determination of the amount of compensation to be awarded for the land acquired on the date of publication of Section 4(1) notification. Section 23(1) of the Act contemplates determination of the market value of the land acquired as on the date of publication of the notification under Section 4(1) of the Act and therefore, sale statistics have been gathered for a period of three years preceding the date of publication of the notification. Therefore, it is not correct to say that the fixation of the market value on the date of Section 4(1) notification is confiscatory, for, the Act contemplates the fixation of the market value only as on the date of notification.

55. In the instant case, it is not disputed that the authorities have fixed the market value of the lands acquired as on the date of publication of the notification under Section 4(1) of the Act. As already stated, compensation is payable as on the date of publication of Section 4(1) notification and therefore it is futile to contend that the fixation of market value as on the date of Section 4(1) notification after the lapse of more than several years would render the compensation illusory and that the second part of Section 23(1) of the Act is hit by the second proviso to Article 31-A of the Constitution and therefore unconstitutional. It is equally untenable to contend that the later part of Section 23(1) of the Act is null and void and

unconstitutional.

56. It is useful now to consider the judgments cited by Mr. P. Sathasivam learned Special Government Pleader, which consider the scope of Section 23(1) of the Act. They are reported in *Aflatoon v. Lt Governor, Delhi* : [1975]1SCR802 , *Ratni Devi v. Chief Commissioner, Delhi* : AIR 1975 SC1699 and *Chandra Bansi Singh v. State of Bihar* : [1985]1SCR579 . The former two decisions have already been referred in paragraphs supra.

57. In the decision reported in *Chandra Bansi Singh v. State of Bihar* : [1985]1SCR579 , apart from the other questions, another question was raised before the Supreme Court that there was sufficient delay between Section 4(1) notification and taking over possession of the land during which the price of land had appreciated substantially, and therefore, the compensation should be paid according to the value of the land prevailing as on the actual date of taking possession. The Supreme Court rejected the said contention as without any substance for the following reasons-

(1) that it is not the fault of the Collector for causing the delay in taking over the possession because the matter was pursued both in the courts and before the Government and the proceedings had to be stayed, as a result of which the Collector was prevented from taking possession or giving his award, although all other proceedings had taken place.

(2) the land owners being in continuous possession of the land had enjoyed the usufruct of the same, particularly, the lands happened to be mostly mango orchards and they must have derived large benefits by selling them in the market.

However, the Supreme Court has observed that so far as the delay is concerned, the appellants have undoubtedly a case for payment of some additional compensation in equity though not under law as the Supreme Court is not only a Court of law but a Court of equity as well. Therefore, the Supreme Court has observed that it will be impossible for the Supreme Court to deny this relief to the appellants before it.

58. According to Mr. P. Sathasivam, the learned Special Government Pleader the writ petitions have been filed in the year 1982 and if the date of publication of Section 4(1) notification viz., 12.11.1975 is taken into consideration, there is a delay of nearly seven years in approaching this Court. It is also contended that even if the declaration made under Section 6 of the Act is taken into consideration, the same having been published in the gazette on 10.11.1978, there is no explanation for the delay in filing the writ petitions in 1982. In support of the plea that the petitioners are not entitled to any relief as they are guilty of laches, the learned Special Government Pleader placed strong reliance on the decision reported in *State of Mysore v. V.K. Kannan* : [1976]1SCR369 , wherein the Supreme Court held that the writ petitions were filed after an unreasonable lapse of time. We are of the view that the proposition laid down in the said case is squarely applicable to the facts of the case on hand.

59. In the instant case, the petitioners are fully aware of the land acquisition proceedings, which were initiated as early as 12.11.1975. Notices for the enquiry under Section 5-A of the Act were also served on them in December, 1975 itself. They also participated in the Section 5-A enquiry by filing their objections. Their objections were communicated to the requisitioning body and the remarks received from them were again communicated to the petitioners on 23.8.1978 and the order was passed on 30.8.1978. Nevertheless, they waited for years in launching the writ proceedings in this Court. There is no explanation for this long delay. Hence, we are of the view, that the petitioners are guilty of laches in approaching this Court. Consequently, we are also of the view, that they are not entitled to seek relief under Article 226 of the Constitution. The writ petitions are liable to be dismissed on this ground as well.

60. We may also usefully refer to a Division Bench decision of this Court consisting of the learned Chief Justice and T. Somasundaram J., reported in *State of Tamil Nadu v. Rajendran* (1993) 2 L.W. 352, wherein the Bench followed the decision of the Supreme Court reported in *State of Mysore v. V.K. Kannan* : [1976]1SCR369 and held as follows:

It may be pointed out that land acquisition is made for a public purpose. If it has to be interfered with the party has to be diligent and has to approach the Court without undue delay.

61. In the decision reported in *Yusufbhai Noormohmed Nendoliya v. State of Gujarat* : AIR 1991 SC2153 , the Supreme Court has observed as follows:

The explanation is intended to confer a benefit on a landholder whose land is acquired after the declaration under Section 6, is made in cases covered by the explanation. The benefit is that the award must be made within a period of two years of the declaration, failing which the acquisition proceedings would lapse and the land would revert to the land-holder. In order to get the benefit of the said provision what is required is that the land-holder who seeks the benefit must not have obtained any order from a Court restraining any action or proceeding in pursuance of the declaration under Section 6 so that the explanation covers only the cases of those land-holders who do not obtain any order from a court which would delay or prevent the making of the award or taking possession of the land acquired.

62. In the instant case, the petitioners have approached this Court in the year 1982 and obtained interim orders of stay and the same was vacated and modified on 16.12.1982 by a learned single Judge of this Court. The learned Judge while vacating the interim stay made it clear that the petitioners are not opposed to the acquisition that has been made and hence, there is no need to continue the stay of taking possession of the lands pursuant to the acquisition proceedings. After the said order, the authorities have proceeded further and passed the awards in March, June and July, 1983. The delay, if any, occasioned has also been sufficiently and conveniently explained by the State Government in their counter-affidavit.

63. In the decision reported in *Ram Chand v. Union of India* : (1994)1SCC44 , the Supreme Court held that in view of Sub-section (1) of Section 11 and Sub-section (1) of Section 23 of the Act, the market value of the lands used to be fixed with reference to the date of publication of the notification under Section 4(1) of the Act irrespective of the dates on which the declaration under Section 6 or award under

Section 11 of the Act are made or possession is taken under Section 16 of the Act. Writ petitions and civil appeal were filed before the Supreme Court for quashing the land acquisition proceedings which had been initiated between 1959 and 1965 by issuance of notification under Section 4 of the Act but in which no awards were made upto the years 1979-80 although the declarations under Section 6 of the Act had been made in the years 1966 and 1969. According to the landowners, having issued the declaration in respect of the lands in question, no further steps, for making of the award or payment of the compensation, were taken for more than 14 years from the date of the declarations under Section 6 of the Act and that the awards were made only in the years 1980, 1981 and 1983 and that the said procedure was adopted only to peg the market value of the lands between the years 1959 and 1965, which has inflicted great injury to the petitioners inasmuch as the compensation has been worked out with reference to the dates of notifications under Section 4 of the Act.

64. In that case, on behalf of the respondents, it was pointed out before the Supreme Court that the petitioners have approached the Supreme Court only after making of the awards, or when awards were to be made, having waited for more than fourteen years, without invoking the jurisdiction of the High Court under Article 226 of the Constitution or of this Court under Article 32 of the Constitution. The Supreme Court while considering the said submission observed that the question of delay in invoking the writ jurisdiction of the High Court under Article 226 of the Constitution or of the Supreme Court under Article 32 of the Constitution, has to be considered along with the inaction on the part of the authorities who had to perform their statutory duties. The Supreme Court stated that by not questioning the validity of the acquisition proceedings for a long time since the declarations were made under Section 6, the relief of quashing the acquisition proceedings has become inappropriate, because, in the meantime, the lands notified have been developed and put to public use and therefore, the outweighing public interest has to be given due weight and that is why the Supreme Court has been resisting attempts on the part of the landholders seeking quashing of the acquisition proceedings on grounds of delay in completion of such proceedings. The Supreme Court was of the opinion that there was no justification on the part of the respondents/authorities for the delay in completion of the

proceedings after the judgment of the Supreme Court in Aflatoon's case : [1975]1SCR802 . Therefore, the Supreme Court held that the reasonable time for making the award was about two years from that date viz., 23.8.1974 and the time taken beyond two years for the making of the award will be deemed to be unreasonable. Therefore taking into consideration the interest of the cultivators and the public, instead of quashing the proceedings for acquisition, the Supreme Court directed that the petitioners shall be paid an additional amount of compensation to be calculated at the rate of 12% per annum after expiry of two years from 23.8.1974, the date of the judgment of the Supreme Court in Aflatoon case : [1975]1SCR802 , till the date of the making of the awards by the Collector, to be calculated with reference to the market value of the land in question on the date of notification under Section 4(1) of the Act. Thus, it is clearly, seen from the above judgment of the Supreme Court that the market value of the land is to be fixed only with reference to the date of publication of the notification under Section 4(1) of the Act irrespective of the date on which the declaration under Section 6 of the Act or the award under Section 11 of the Act is made or possession is taken under Section 16 of the Act. Therefore, we have no hesitation in rejecting the plea of the learned Counsel for the petitioners in regard to Unconstitutional validity of Section 23(1) of the Act.

65. In the instant case, as pointed out earlier in paragraphs supra, the concerned authority has issued the notice and passed the award and complied with all the other formalities within the time and hence the petitioners are not entitled to any additional compensation and as awarded by the Supreme Court in the case mentioned above Ram Chand v. Union of India : (1994)1SCC44 . As rightly pointed out by the learned Counsel for the respondents, in order to compensate for loss arising from escalation in land prices that took place in normal cases, there is already a provision under Section 23(1A) of the Act for payment of an additional amount at 12% per annum of the market value of the land from the date of publication of the notification under Section 4(1) of the Act to the date of award of the Collector or of taking possession of the land whichever is earlier. Apart from the above, solatium at 30% of the market value is also paid under Section 23(2) of the Act to the landowner in consideration of the compulsory nature of the acquisition besides interest at 9% per annum for the first year and at 15% per

annum for the period thereafter for delayed payments under Section 34 of the Act. Thus, in our view, the above provisions properly and sufficiently take care of the normal rise in land prices. The above provisions also make the compensations more realistic and just.

66. The decision reported in Radhakrishna Naidu v. State of Tamil Nadu I.L.R. (1994) Mad. 763 was rendered by one of us (A.R. Lakshmanan, J.) wherein this Court held that the writ petition filed after 18 years from Section 4(1) notification and 10 years after the award was not maintainable and cannot be entertained. The decision of a Division Bench of this Court consisting of the Hon'ble K.A. Swami, C.J. and T. Somasundaram, J., in State of Tamil Nadu v. Rajendran (1993) 2 L.W. 352, which has taken a similar view, was also followed therein. While dismissing the writ petition, one of us (A.R. Lakshmanan, J.) has observed as follows:

Thus it is seen from the Supreme Court rulings and also of the Division Bench rulings of this Court referred to supra that people should be diligent in approaching this Court without undue delay and that if the land acquisition is made for a public purpose, it has to be interfered with only if the parties are diligent in approaching this Court.

We are also of the view that the above judgment of one of us (A.R. Lakshmanan, J.) has laid down the correct proposition of law applying the various rulings of the Supreme Court and Division Bench of this Court.

On a careful analysis of the entire materials placed before us and the arguments advanced by the learned Counsel on either side, we are of view that the writ petitions are liable to be dismissed not only on the question of laches, but also on merits as discussed supra. The petitioners are not entitled to any relief.

For the fore-going reasons, all the writ petitions fail and are dismissed. However, there will be no order as to costs.