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Court : Chennai

Decided On : Aug-01-2012

Judge : Vinod K. Sharma

Appeal No. : W.P. NO. 20141 OF 2011 & M.P. NO. 1 OF 2011

Appellant : R. Radhakrishnan and Others

Respondent : The Secretary to Government of Tamilnadu Housing and Urban Development Dept., Madras and Others

Advocate for Pet/Ap. : For the Petitioners: M.S. Subramanian, Advocate. For the Respondent: R1 and R3 - S. Gomathy Nayagam, Addl. Advocate General, R2 - S. Vanchinathan, Advocate.

Judgement :

(Prayer: Writ petition is filed under Article 226 of Constitution of India for issuance of a Writ in the nature of Declaration, declaring that the entire Acquistion Proceedings in pursuance of the Notification under Section 4(1) of the Land Acquisition Act made in GO No.570 Housing and Urban Development dated 24.7.1984 and the declaration under Section 6 of the Land Acquisition Act made in GO No.351 Housing and Urban Development dated 4.3.1986 in so far as the petitioner lands are concerned in TS No.16/1 measuring 1 Ground 1306 sq. ft. in

Block No.38, Puliyur Village, Egmore-Nungambakkam Taluk, Chennai District together with right of way over the 30 feet wide common private road leading to Akbarabad First Street, Kodambakkam, Chennai-24 as having lapsed by efflux of time by virtue of Section 11-A of the Land Acquisition Act and and consequently set aside the Award No.2/98 dated 10.09.1998 insofar as the petitioners' land mentioned above are concerned.)

ORDER

1. The petitioner has approached this Court with a prayer for issuance of a writ in the nature of Certiorari, declaring that the entire Acquisition Proceedings in pursuance to the Notification under Section 4(1) of the Land Acquisition Act and declaration under Section 6 of the Land Acquisition Act, issued vide GO No.351 Housing and Urban Development dated 04.03.1986 concerning the lands of the petitioners, have lapsed by efflux of time in view of Section 11-A of the Land Acquisition Act.

2. The first petitioner is the owner of the land, bearing D.No.16/3, New No.36, Akbarabad 1st Street, Kodambakkam, Chennai, measuring one ground and 1306 sq.ft., comprised in T.S.No.16/1 part as per patta T.S.No.16/7 in Block No.38, Puliyur Village, Egmore-Nungambakkam Taluk, Chennai District, together with right of way over the 30 feet wide common private road leading to Akbarabad First Street, Kodambakkam, Chennai. The property was purchased vide registered sale deed dated 22.02.2007 from the then owner J.Sathya and others, the legal heirs of the deceased M.Jagan Mohan, who are added as petitioners 2 to 5.

3. The petitioner, since the date of purchase, is in possession and enjoyment of the property and prior thereto, the vendors of the petitioner were in possession and enjoyment of the property in their own right and paying all the taxes. The petitioner has also been issued patta, which was earlier held by M.Jagan Mohan.

4. The petitioner no.1 applied to the Corporation of Chennai for construction and he was asked deposit a sum of Rs.9,79,200/- (Rupees Nine Lakhs Seventy Nine Thousand and Two Hundred only) for processing his planning permission. The amount was paid on 29.10.2009 and the planning permission was granted on

02.11.2009.

5. The petitioner commenced construction in the year 2009, when he was obstructed by the Inspector of Police, R2 Kodambakkam Police Station. The petitioner, being aggrieved by the action of the Inspector of Police, in interfering with the construction by petitioner, filed W.P.No.6472 of 2010 for issuance of a writ in the nature of prohibition, restraining the Inspector of Police and his subordinates from interfering with the peaceful possession and enjoyment of the property.

6. It is submitted, that on coming to know, that the land was in acquisition, the petitioner impleaded the Commissioner, Corporation of Chennai and Tahsildar, Egmore-Nungambakkam Taluk, Chennai. However, subsequently, the writ petition was dismissed as withdrawn with liberty to challenge the acquisition proceedings.

7. It is pleaded, that the notification under Section 4(1) was issued vide G.O.Ms.No.570 Housing and Urban Development dated 24.07.1984 and was published in the gazette on 22.08.1984 for acquiring 43 grounds, 2215 sq.ft in Block No.38. The land of petitioner was included. The notification under Section 4(1) of the Land Acquisition Act was followed by declaration under Section 6 on 19.03.1986. The notification under Section 6 was published in the newspapers on 09.04.1986

8. Samuga Nala Pani Kazhagam, through its Secretary filed W.P.No.13985 of 1986 for quashing the land acquisition proceedings. The predecessor in interest of petitioner through K.M.Ahamadullah Basha also filed W.P.No.2879 of 1988 to challenge the acquisition of land, measuring 21 grounds 2215 sq.ft. falling in T.S.No.16/1 and T.S.No.16/2 in Puliyur Village.

9. Stay was granted in both the writ petitions, on 22.12.1986 to Samuga Nala Pani Kazhagam and to Thiru K.M.Ahamadullah Basha on 21.03.1988. The stay granted was subsequently modified and the State was allowed to continue with the proceedings of land acquisition and the dispossession of petitioners was stayed. Notice under Section 9 was issued after stay order was modified and the award was passed on 10.09.1988.

10. It is submitted that during the pendency of proceedings for passing of award, the writ petition challenging the acquisition was ordered to be dismissed on 20.02.1997.

11. As already observed above, the petitioner purchased the property from the legal heirs of M.Jagan Mohan, who was vendee from K.M.Ahamadullah Basha on 22.02.2007. The sale deed was effected after getting permission from the Hon'ble High Court with regard to sale of minor share in O.P.No.326 of 2006 dated 29.11.2006.

12. It is the submission of petitioner, that in view of Section 11-A of the Land Acquisition Act, award was required to be passed within two years of declaration under Section 6, i.e. on or before 14.04.1988. But no award was passed inspite of the fact that interim stay was granted on 17.03.1988 and modified on 24.06.1993.

13. Section 11-A of the Land Acquisition Act reads as under:

"11-A Period within which an award shall be made:-

The Collector shall make an award under Section 11 within a period of two years from the date of the publication of the declaration and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse:

Provided that in a case where the said declaration has been published before the commencement of the Land Acquisition (Amendment) Act, 1984, the award shall be made within a period of two years from such commencement.

Explanation -In computing the period of two years referred in this Section, the period during which any action or proceeding to be taken in pursuance of the said declaration is stayed by an order of a Court shall be excluded."

14. It is the submission of petitioner, that even before filing of writ petition, one year 11 months and 6 days had lapsed and the time of only 24 days was left to pass the award. It is also submitted, that interim order was in force only from 21.03.1988 to 24.06.1993, therefore, the award lapsed on expiry of 2 years in terms of Section 11-A of the Land Acquisition Act.

15. The only ground of challenge in this writ petition is, that if the period of stay is excluded in terms of explanation to Section 11-A, still the award passed on 10.09.1998 is invalid and nonest. On the pleadings referred to above, it is prayed that the writ petition in the nature of Certiorari, declaring the entire acquisition, cannot be lost as prayed for.

16. The writ petition is opposed by the respondents. Counter has been filed by respondent no.2. It is the stand in counter, that after verification of the town survey land register and inspection, notification under Section 4(1) of the Land Acquisition Act was was issued on 24.07.1984, which was followed by declaration under Section 6 of the Land Acquisition Act. It is admitted, that the award was passed for the entire land vide award No.2/98 dated 10.09.1998 and 1/99 dated 18.05.1999. The award compensation was deposited in the Civil Court for want of land owners or interested parties to prove documentary evidence to their ownership.

17. It is the stand of respondents, that the Tamil Nadu Housing Board is the absolute owner of the land in T.S.No.16/1 and 16/7 measuring 10 grounds and 756 sq.ft. of Puliyur Village vide award No.2 of 1998 dated 10.09.1998. Whereas land in T.S.No.16/4, 5 and 6 was acquired by award No.1/99 dated 18.05.1999 and the land in T.S.No.16/2 was acquired vide award dated 08.06.2010. The land was handed over to the Housing Board after vacating occupants of the land.

18. It is also stand of respondents, that earlier writ filed by Samuga Nala Pani Kazhagam, and the writ filed by K.M.Ahamadullah Basha was dismissed by this Court. The stand in the counter is, that the petitioner is indirectly questioning the validity of the award, which was passed in the year 1998 as per the award 2/98, therefore, the writ petition is hit by delay and laches. The locus standi of the petitioner to challenge the acquisition is also questioned.

19. It is not disputed, that the attempt by predecessor in interest of petitioner, i.e. K.M.Ahamadullah Basha to challenge the land acquisition proceedings failed on 20.02.1997. It is also not disputed, that the award was passed after dismissal of the writ petition on 10.09.1998. Whereas the petitioner purchased this property from the vendee of K.M.Ahamadullah Basha on 22.02.2007, i.e. 9 years after passing of the award.

20. The questions to be determined in this case, therefore are;

"Whether in view of the provisions of Section 11-A of the Land Acquisition Act, the entire proceedings of the acquisition of land stood lapsed?

and

Whether the subsequent purchaser of land can challenge the acquisition proceedings and the award after lapse of 9 years of the passing of the award?"

21. Learned counsel for the petitioners in support of the contention, that the award had lapsed, as the Collector had failed to pass the award within two years, placed reliance on the judgment of the Hon'ble Supreme Court in **Ravi Khullar and another vs. Union of India and others, (2007) 5 SCC 231**, wherein the Hon'ble Supreme Court was pleased to lay down as under:

"47. In this appeal apart from other questions which have been raised in this batch of appeals, a question of limitation has been raised. It is submitted on behalf of the appellant that the award made by the Collector in the instant case was barred by limitation under Section 11-A of the Act inasmuch as it was not made within a period of 2 years from the date of the publication of the declaration after excluding the period during which an order of stay granted by the High Court operated. The facts are not in dispute and since this plea became available to the appellant only after the dismissal of the writ petition by the High Court, we permitted the appellant to raise this plea after giving an opportunity to the respondents to reply to the same. Since the facts are not in dispute, we proceed to decide the question of limitation in this appeal.

48. It is not in dispute that the notification under Section 4 of the Act was issued on 23-1-1965. A declaration under Section 6 of the Act was published on 26-12-1968. The appellant filed the writ petition before the High Court on 12-9-1986 in which an order for maintenance of status quo was made on 18-9-1986. It is the case of the respondents that in view of the status quo order the award could not be pronounced. While the awards were pronounced in other cases on 19-9-1986, it was not pronounced in the case of the appellant in view of the status quo order.

The High Court by the impugned judgment dismissed the writ petition filed by the petitioner on 13-2-2003 whereafter the award was pronounced on 1-3-2003.

49. We may notice that the Land Acquisition (Amendment) Act, 1984 came into force w.e.f. 24-9-1984.

50. Keeping in view these dates it will be seen that award ought to have been made within a period of 2 years from the date of the publication of the declaration under Section 6 of the Act. However, in a case where the said declaration was published before the commencement of the Land Acquisition (Amendment) Act, 1984 the award must be made within a period of two years from such commencement. This is the mandate of Section 11-A of the Act. In the instant case the declaration under Section 6 of the Act was published on 26-12-1968 i.e. before the commencement of the Amendment Act of 1984. Thus the proviso to sub-section (1) of Section 11-A applied and the award was required to be made within a period of two years from such commencement. So calculated the award ought to have been made on or before 23-9-1986 when the period of 2 years from the commencement of the Amendment Act, 1984 expired. It is not disputed that an order of status quo was made on 18-9-1986 which prevented the Land Acquisition Officer from pronouncing the award. The aforesaid order of status quo operated till 13-2-2003 which period, as rightly submitted by the learned Additional Solicitor General, had to be excluded in calculating the period of 2 years. Thus after excluding the aforesaid period the award should have been pronounced on or before 18-2-2003. However, the award was pronounced on 1-3-2003. Ex facie, therefore, the award having not been made within the period prescribed by Section 11-A of the Act, the entire proceeding for acquisition of the land lapsed on 18-2-2003, the last date for pronouncement of the award.

51. The learned Additional Solicitor General, however, submitted that the judgment in the writ petition was pronounced on 13-2-2003 and an application was made for certified copy of the same on 14-2-2003. The certified copy was ready on 27-2-2003. It is his contention that the period between 14-2-2003 and 27-2-2003 must be excluded and if that period is excluded, time to make the award was available up to 4-3-2003 whereas the award was pronounced on 1-3-2003. He submitted

that the period taken by a public authority to obtain the authentic copy of the order, which is evidence of the contents thereof, must in all cases be excluded and the period taken to obtain a certified copy cannot cause any prejudice in the matter of calculation of the period of limitation. Since the Land Acquisition Officer, who is a public functionary, had to look into the contents of the order passed by the Court before taking any action including the pronouncement of the award, the said period ought to have been excluded. In effect the learned Additional Solicitor General contended that the rule incorporated in Section 12 of the Limitation Act must apply in computing the period of limitation under Section 11-A of the Act. He also relied on judgments of this Court in N. Narasimhaiah v. State of Karnataka[15]; G.M., Deptt. of Telecommunications v. Jacob[16] and Shakuntala Devi Jain v. Kuntal Kumari[17]. He submitted that since the authority had taken immediate steps in applying for certified copy and since the Explanation to Section 11-A prescribed a principle of limitation, it is necessary that analogous principles contained in the Limitation Act must necessarily be applied. Applying the principle underlined under sub-section (1) of Section 11-A of the Act read with Sections 76 and 77 of the Evidence Act and also based on the principle actus curaie neminem gravabit, the period during which the certified copy was not obtained has to be excluded.

52. Shri K.K. Venugopal, learned Senior Counsel appearing on behalf of the intervener also reiterated the same submission and contended that the Land Acquisition Officer could not have proceeded to make the award unless he had seen the authenticated copy of the order which had the effect of vacating the order of status quo passed as an interim measure.

53. Learned counsel for the appellants on the other hand contended that Section 11-A of the Act does not provide for extension of time to make an award or condonation of delay in making the award. Though it provides for exclusion of the period during which any action or proceeding to be taken in pursuance of the declaration is stayed by an order of the court, it does not exclude the time taken for obtaining a certified copy of the judgment or order vacating or having the effect of vacating the order of stay. He further submitted that the Land Acquisition Collector was a party in the writ petition and had, therefore, knowledge of the fact that the writ petition had been dismissed which resulted in vacation of the interim

order of status quo. In the absence of any provision in the Land Acquisition Act for exclusion of time taken to obtain a certified copy of the judgment of the High Court, the Land Acquisition Collector, ought to have proceeded to make the award having come to know that the writ petition filed by the appellant had been rejected by the High Court.

54. In the matter of computing the period of limitation three situations may be visualised, namely, (a) where the Limitation Act applies by its own force; (b) where the provisions of the Limitation Act with or without modifications are made applicable to a special statute; and (c) where the special statute itself prescribes the period of limitation and provides for extension of time and/or condonation of delay. The instant case is not one which is governed by the provisions of the Limitation Act. The Land Acquisition Collector in making an award does not act as a court within the meaning of the Limitation Act. It is also clear from the provisions of the Land Acquisition Act that the provisions of the Limitation Act have not been made applicable to proceedings under the Land Acquisition Act in the matter of making an award under Section 11-A of the Act. However, Section 11-A of the Act does provide a period of limitation within which the Collector shall make his award. The Explanation thereto also provides for exclusion of the period during which any action or proceeding to be taken in pursuance of the declaration is stayed by an order of a court. Such being the provision, there is no scope for importing into Section 11-A of the Land Acquisition Act the provisions of Section 12 of the Limitation Act. The application of Section 12 of the Limitation Act is also confined to matters enumerated therein. The time taken for obtaining a certified copy of the judgment is excluded because a certified copy is required to be filed while preferring an appeal/revision/review, etc. challenging the impugned order. Thus a court is not permitted to read into Section 11-A of the Act a provision for exclusion of time taken to obtain a certified copy of the judgment and order. The Court has, therefore, no option but to compute the period of limitation for making an award in accordance with the provisions of Section 11-A of the Act after excluding such period as can be excluded under the Explanation to Section 11-A of the Act.

55. Our conclusion finds support from the scheme of the Land Acquisition Act itself. Section 11-A of the Act was inserted by Act 68 of 1984 with effect from 24-9-1984.

Similarly, Section 28-A was also inserted by the Amendment Act of 1984 with effect from the same date. In Section 28-A the Act provides for a period of limitation within which an application should be made to the Collector for redetermination of the amount of compensation on the basis of the award of the court. The proviso to sub-section (1) of Section 28-A reads as follows:

"Provided that in computing the period of three months within which an application to the Collector shall be made under this sub-section, the day on which the award was pronounced and the time requisite for obtaining a copy of the award shall be excluded."

56. It will thus be seen that the legislature wherever it considered necessary incorporated by express words the rule incorporated in Section 12 of the Limitation Act. It has done so expressly in Section 28-A of the Act while it has consciously not incorporated this rule in Section 11-A even while providing for exclusion of time under the Explanation. The intendment of the legislature is therefore unambiguous and does not permit the court to read words into Section 11-A of the Act so as to enable it to read Section 12 of the Limitation Act into Section 11-A of the Land Acquisition Act.

57. The judgments cited at the Bar are also of no help to the respondents. In Shakuntala Devi Jain[17] this Court held that an appeal is incompetent unless the memorandum of appeal is accompanied by a certified copy of the decision. It condoned the delay in that case giving the benefit of Section 5 of the Limitation Act in the facts and circumstances of the case. The applicability of the Limitation Act was not in dispute in that case.

58. In N. Narasimhaiah[15] the order under Section 17(4) of the Land Acquisition Act dispensing with the enquiry under Section 5-A was quashed by the Court with liberty to the State to proceed further in accordance with law. In such circumstances it was held that running of the limitation should be counted from the date of the order of the Court received by the Land Acquisition Officer. The limitation prescribed in clause (ii) of the first proviso to sub-section (1) of Section 6 would apply to publication of declaration under Section 6(1) afresh. If it was published within one year from the date of the receipt of the order of the Court by

the Land Acquisition Officer, the declaration published under Section 6(1) would be valid. The principle laid down therein does not help the respondents because by an order of the Court the limitation prescribed for publication of a declaration under Section 6(1) stood extended. That is how this Court construed the order of the High Court giving liberty to the State to proceed further in accordance with law. In the instant case no such question arises. The situation that arises in the instant case is fully governed by the provisions of Section 11-A of the Act which does not give any discretion to the Court to exclude any period in computing limitation other than that provided in the Explanation to Section 11-A of the Act.

59. In G.M., Deptt. of Telecommunications[16] a question arose as to whether the High Court by directing the passing of the award by certain date, irrespective of the provisions contained in the Act, could prevent the Collector from passing an award at any time beyond the specified date. In that case the facts were that the High Court had directed the passing of the award by 3-12-1992 irrespective of the provisions contained in the Land Acquisition Act. This was done with a view to avoid further delay and ensure expeditious conclusion of the proceedings. This Court found that there was nothing to indicate in the order of the High Court stipulating or extending the time for passing the award, that beyond the time so permitted, it cannot be done at all and the authorities are disabled once and for all even to proceed in the matter in accordance with law, if it is so permissible for the authorities under the law governing the matter in issue. This Court held that the court cannot be imputed with such an intention to stifle the authorities from exercising powers vested with them under statute, or to have rendered an otherwise enforceable statutory provision, a mere dead letter. This Court considered the decision in N. Narasimhaiah[15] and observed: (Jacob case[16], SCC p. 666, para 7)

“This decision is of no assistance whatsoever to the respondents in the present case. Notwithstanding the statutory period fixed, further time came to be granted due to intervention of court proceedings in which a direction came to be issued to proceed in the matter afresh, as directed by the court, apparently applying the well-settled legal maxim - actus curiae neminem gravabit: an act of the court shall prejudice no man. In substance what was done therein was to necessitate afresh

calculation of the statutory period from the date of receipt of the copy of the order of the court. Granting of further time than the one stipulated in law in a given case as a sequel to the decision to carry out the dictates of the court afresh is not the same as curtailing the statutory period of time to stultify an action otherwise permissible or allowed in law. Consequently, no inspiration can be drawn by the respondents in this case on the analogy of the said decision."

60. In our view the principle laid down in this judgment is of no help to the respondents and if at all it supports the contention of the appellant that the period of limitation prescribed cannot be curtailed by order of the court. As a necessary corollary it cannot be extended contrary to the statutory provisions. We have, therefore, no doubt in holding that so far as the acquisition of the lands belonging to Palam Potteries is concerned, the proceedings lapsed for failure of the Collector to make an award within the prescribed period of limitation under Section 11-A of the Act."

22. Reliance was also placed on the judgment of the Hon'ble Supreme Court in **Mohan and another vs. State of Maharashtra and others, (2007) 9 SCC 431**, wherein the Hon'ble Supreme Court was pleased to lay down, that the limitation period of two years for making award has to be reckoned from the date of publication of declaration under Section 6 and not from the date of publication of any corrigendum to the declaration.

23. Learned counsel for the petitioners also placed reliance on the judgment of the Hon'ble Supreme Court in **Kunwar Pal Singh (Dead) by LRs. vs. State of U.P. and others, (2007) 5 SCC 85**, wherein the Hon'ble Supreme Court was pleased to lay down, that the award, which was passed after six months, as allowed by the Hon'ble Supreme Court, resulted in lapse of acquisition proceedings.

24. Finally, learned counsel for the petitioners placed reliance on the judgment of the Hon'ble Supreme Court in the case of **Lok Sewa Shikshan Mandal vs. A.R.Mundhada Charitable Trust and others, (2007) 9 SCC 779,** wherein the Hon'ble Supreme Court was pleased to lay down that:

"The High Court was right in observing that even if order dated 30-4-1986, issuing rule on stay would mean that the Court had granted stay of proceedings (though no stay was granted on that date), the rule on stay was disposed of on 31-7-1986 clarifying that any construction would be subject to the decision of the petition. Thereafter, there was no question of any stay in the matter and as such the case was squarely covered by main part of Section 11-A of the Act. Moreover, the High Court was right and wholly justified in holding that there was no stay of any proceeding and hence, Explanation to Section 11-A had no application. If it is so, it cannot be held that the High Court had committed an error of law or misconstrued Section 11-A by holding that since award was not made within a period of two years from the date of publication of final notification under Section 6of the Act, the proceedings lapsed."

25. Learned Additional Advocate General has opposed this writ petition on the following grounds:

i. that the writ petition suffers from vice of delay and laches. Learned Additional Advocate General vehemently contended, that admittedly the award was passed on 10.09.1998, though after two years of notification under Section 6, whereas this writ petition has been filed only in the month of August 2011, i.e. after 18 years of passing of award;

ii. that the writ petition is barred under the principle of resjudicata for the reasons that it admitted case of petitioners, that predecessor in the interest of petitioner Thiru K.M.Ahamadullah Basha has filed W.P.No.2879 of 1988, which was dismissed on 22.09.1997. The point now sought to be raised was available to the predecessor in the interest of petitioner, as the plea of land acquisition proceedings has been opted due to passing of award dated 10.09.1998, was available to him.

iii. that the petitioner, being the subsequent purchaser, had no locus standi to challenge the land acquisition proceedings.

iv. that the petitioner cannot take any advantage of delay in taking possession, as it was on account of pendency of writ petition in the High Court, that the

respondents had their hands tied from taking possession, though they were entitled to possession after passing of the award, as the land had vested with State Government free from all encumbrance.

26. On consideration, I find that this writ petition deserves to fail. Though it cannot be disputed, that as per the provisions of Section 11-A of the Land Acquisition Act, it was mandatory for the respondents to pass an award within two years of declaration, made under Section 6 of the Land Acquisition Act after excluding the period for which the stay was in operation, but in this case the stay was granted by this Court on 22.12.1986 and in the case of petitioner on 21.03.1988, and admittedly, it was modified on 24.06.1993.

27. On interpretation of Section 11-A of the Land Acquisition Act, the respondents could pass the award within 24 days from 24.06.1993, which was not admittedly done, but at the same time, the writ petition filed by the predecessor in the interest of petitioner, was dismissed on 20.02.1997. On that date, the plea, that the Land Acquisition Proceedings had lapsed, was available to the predecessor in the interest of petitioner. Inspite of this, the writ petition was dismissed, which was not challenged and was allowed to attain finality.

28. While holding that the award was not passed within the stipulated period, as stipulated under the Act, still it has to be seen whether the petitioner has any locus standi to challenge the award or the acquisition proceedings to claim ownership. The petitioner admittedly purchased this land on 22.02.2007, i.e. after 9 years of passing of the award. The petitioner no.1 is the subsequent purchaser. Even the petitioners 2 to 5 are also not legal heirs of the original owner K.M.Ahamadullah Basha, but the legal heirs of Mr.M.Jagan Mohan, it has not been pleaded how Mr.M.Jagan Mohan had become owner of the land.

29. Learned Additional Advocate General, therefore, was right in contending, that this writ petition suffers from vice of delay and latches . The Hon'ble Supreme Court in the case of **State of Punjab vs. Gurdev Singh Ashok Kumar, 1991 (3) SCT 91**, took a view, that even void order is governed by Article 120 of the Limitation Act, which can be set aside only during the period of limitation. The declaration sought by petitioner under Article 226 of the Constitution of India,

though not governed by law of limitation, but still it can safely be said, that the writ petition suffers from vice of delay and latches, as this Court does not exercise equitable jurisdiction when the suit to seek declaration itself becomes barred by limitation.

30. The Hon'ble Supreme Court in **Sneh Gupta vs. Devi Sarup and others, (2009) 6 SCC 194**, was pleased to lay down as under:

"53. There cannot be any doubt that even if an order is void or voidable, the same must be set aside, as has been held by this Court in M. Meenakshi v. Metadin Agarwal and Sultan Sadik v. Sanjay Raj Subba.

58. If the compromise has been accepted in absence of all the parties, the same would be void. But if the same having resulted in grant of a decree, the decree based on compromise was required to be set aside. The compromise may be void or voidable but it is required to be set aside by filing a suit within the period of limitation. (See Mohd. Noorul Hoda v. Bibi Raifunnisa.)

65. In Panna Lal v. Murari Lalthis Court held: (AIRp.1385,para 3)

“3. … Under Article 164 of the Limitation Act, 1908, the period of limitation for an application by a defendant for an order to set aside a decree passed ex parte was 30 days from ‘the date of the decree or when the summons was not duly served, when the applicant had knowledge of the decree’. The onus is on the defendant to show that the application is within time and that he had knowledge of the decree within 30 days of the application. If the defendant produces some evidence to show that the application is within time, it is for the plaintiff to rebut this evidence and to establish satisfactorily that the defendant had knowledge of the decree more than 30 days before the date of the application.”

31. In view of the settled law, even if the award under challenge was in violation of Section 11-A of the Land Acquisition Act, this was required to be challenged within a reasonable time, but certainly not after 3 years, when the suit for declaration itself became time barred.

32. The Hon'ble Supreme Court in the case of **Ravi Khullar and another vs. Union of India and others, 2007 (3) CTC 574,** has been pleased to lay down as under:

"26. It will be noticed that the appellants filed the writ petition challenging the acquisition proceeding which was initiated in 1965 as late as on 25-9-1986, after the award had been declared under Section 11 of the Act. The High Court, in our view, has rightly noticed that the acquisition was challenged almost 21 years after the issuance of the notification under Section 4 of the Act. Indeed the writ proceeding was initiated after the award was declared. The High Court has relied upon the decisions of this Court in Aflatoon v. Lt. Governor of Delhi[7]; Tilokchand Motichand v. H.B. Munshi[8]; Indrapuri Griha Nirman Sahakari Samiti Ltd. v. State of Rajasthan[9]; Pt. Girdharan Prasad Missir v. State of Bihar[10] and H.D. Vora v. State of Maharashtra[11]. Following the principles laid down therein the High Court dismissed the writ petition on the ground of delay and laches. In the facts and circumstances of the case no exception can be taken to the order of the High Court dismissing the writ petition. There was no good reason explaining the delay in moving the High Court in exercise of its writ jurisdiction. It is not necessary to refer to the large number of authorities on the subject since the law is so well settled that there is no need for a further reiteration."

33. It may be noticed, that the writ petition also suffers from bar under the constructive resjudicata. Admittedly, on the date of dismissal of the writ, filed by the predecessor in the interest of petitioners, the time for passing the award had already expired. The plea, that the land acquisition proceedings stood lapsed, was available to the predecessor in the interest of petitioner in W.P.No.2879 of 1988. The dismissal of writ, even after 2 years for making the award had lapsed, will now bar the petitioners from taking this plea, as the petitioner at best can only step only into the shoes of their predecessor.

34. Not only this, the land was purchased by the petitioner admittedly in the year 2007, when the predecessor in the interest of petitioner was left with no interest in view of notice under Section 4 and declaration under Section 6 of the Land Acquisition Act. The petitioners have not challenged the acquisition proceedings.

The petitioners therefore cannot challenge the award or land acquisition proceedings for want of locus standi, being subsequent purchaser. The Hon'ble Division Bench of this Court in **P.Velraj and others vs. The State of Tamil Nadu and others, 2007 (3) CTC 625**, has laid down as under:

"3. Certain other land owners, including the original owner of the land now in dispute, had filed several writ petitions. The original land owner of the present disputed land had filed W.P.No.2879 of 1983. In all those writ petitions the prayer was to the following effect:

"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 of Article 31(A) of the Constitution and direct the 2nd respondent to calculate and pay compensation for the 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."

4. Subsequently, by way of amendment, in alternative, the petitioners claimed compensation not less than the market value as on the date of the award. Such batch of writ petitions, including W.P.No.2879 of 1983 were dismissed by the common judgment dated 22.7.1994. In the present batch of writ petitions, which have been filed by the alleged subsequent purchasers, the main contention was to the effect that since notification under Section 4(1) of the Act had been quashed by the Supreme Court in its judgment dated 21.8.1990 and since no fresh notification under Section 4(1) had been issued, it must be taken that the land continued to remain with the original owner P. Asirvatham and, therefore, the petitioners sought for declaration that the land purchased by the petitioners should not be treated as part of the land acquired.

8. We are afraid the contention raised by the learned Senior Counsel appearing for the appellants cannot be accepted. The appellants claimed to have purchased the land from the power of attorney holder of the original owner, namely, Asirvatham. (It is another matter that the original owner is disputing the authority of the so

called power of attorney holder to sale the land on behalf of the original owner. In the present case, we are not considering the dispute raised on this account). It is therefore obvious that, even assuming that sale deed is valid the purchasers can only step into the shoes of the original owner. As already noticed, the original owner had filed W.P.No.2879 of 1983. The main contention raised in the said writ petition was not regarding the validity of the land acquisition proceedings, but regarding legality of certain provisions in the Act. The alternative prayer was for payment of compensation at market rate. Such writ petition had been dismissed. Declaration under Section 6 had been made and thereafter the award had also been passed so far as the original owner is concerned. As a matter of fact, some of other petitioners, who were parties to the writ petitions, had subsequently filed other writ petitions contending that 4(1) notification itself having been quashed it must be taken that there was no land acquisition. However, such contention was also rejected by the Division Bench in W.A.Nos.1144 and 1145 of 1996. The relevant portion of such judgment has already been extracted. The reasoning given by the Division Bench in those matters are also applicable to the present case. Moreover, since the original owner had remained satisfied with the land acquisition and had never challenged, obviously the alleged subsequent purchasers cannot challenge such land acquisition notification."

35. Though there was no justification with the respondents not to take possession, in absence of any restraint order by the Court, just because of pendency of proceedings, still for the reason, that the original owner was satisfied with the award having not challenged it, the petitioners being subsequent purchasers, cannot now challenge the award.

36. Consequently, finding no merits in this writ petition, it is ordered to be dismissed.

37. No costs. Connected miscellaneous petition is closed.

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