



W.P.No.5220 of 1987

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 09.03.2022

Delivered on : 22.06.2022

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA
and

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

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1.Rukmani (Deceased)
W/o.Palanisamy Gounder

2.Lakshmi (Deceased)
W/o.Nachimuthu Gounder

3.Sivagami
D/o.Kaliappa Gounder

4.Nachimuthu Gounder (Deceased)
S/o.Marappan Gounder

5.Sekar Selvan
S/o.Palanisamy Gounder

6.Dhanabakyam
D/o.Palaniswamy Gounder

7.Jayalakshmi
D/o.Nachimuthu Gounder ... Petitioners

(P5 to P7 are brought on record as Legal Heirs of the deceased PP1, 2 and 4 vide court order dated 05.12.2018 made in WMP No.26526 of 2018 and 26563 of 2018 in W.P.No.5220 of 1987.)

vs.

1.The State of Tamil Nadu,
Rep. By Secretary to Government,
Social Welfare Department,
Fort St. George, Chennai – 600 009.



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2.The Collector of Coimbatore,
Coimbatore.

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3.The Special Tahsildar (LA),
Adi Dravidar Welfare,
Coimbatore.

4.M.Palanisamy (Died)

5.Jayammal
W/o.M.Palanisamy

6.Kalamani
D/o.M.Palanisamy

7.Senthil Kumar
S/o.M.Palanisamy

8.Radhamani
D/o.M.Palanisamy

9.Jayakumar
D/o.M.Palanisamy

10.Santhi
D/o.M.Palanisamy ... Respondents

(R5 to R10 are substituted as Legal Heirs of the deceased R4 vide order dated 14.02.2019, made in WMP No.3421 of 2019 in W.P.No.5220 of 1987)

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records relating to the notification issued by the first Respondent under Section 4(1) of the Land Acquisition Act, 1894 (Social Welfare Department) in G.O.Ms.No.1119, dated 15.05.1985, the consequential declaration made by the first Respondent under Section 6 of the Act in G.O.Ms.No.1536, Social Welfare Department, dated 18.06.1986 and the award passed by the third Respondent in Award No.1/88-89 in Ref. No.1A 5/78, dated 22.09.1988, quash the same.



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(Prayer amended vide Court order dated 09.01.2019 made in
W.M.P.No.653 of 2019 in W.P.No.5220 of 1987)

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For Petitioners : Mr.R.N.Amarnath

For Respondents 1 - 3 : Mrs.Tamilselvi
Additional Government Pleader

For Respondent 5 to 10 : Mr.K.Premkumar

ORDER

SATHI KUMAR SUKUMARA KURUP, J.

Mrs.K.Rukmani and three others had filed the Writ Petition challenging the impugned notification issued under Section 4(1) of the Land Acquisition Act, 1894 vide G.O.Ms.No.1119, dated 15.05.1985 and the subsequent declaration made under Section 6 of the Act vide G.O.No.1536, dated 18.06.1986, by the first respondent.

2.The contention of the Petitioners in the Writ Petition was that the lands in Survey No.142/1 of Ganapathy Village, Coimbatore District belonged to the mother of the first Petitioner. The mother of the first Petitioner had executed a Will in favour of the first Petitioner and her three sisters with condition that the life estate being granted to their father. Subsequent to the death of their father, the property devolved to the Petitioners. There were about 44 houses in the



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property including the houses of the first Petitioner and her sisters.

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They were working in the mills in Coimbatore and were paying rent to the father of the Petitioners during his life time. Therefore, the first Petitioner and her sisters had been benefited from the income from the houses. The Government invariably acquired lands in the villages for public purposes where there are no houses. Here, the property had houses where harijans were residing. Therefore, the husband of the first Petitioner viz., Palanisamy Gounder had objected to the notice sent to the persons in possession of the properties, as per the then prevailing Land Acquisition Act, 1894, stating that there are houses where there are tenants and from the tenants, the owner of the property derived income for his family expenses. Therefore, it cannot be acquired. Also, he had given instances where earlier acquisitions were held in Coimbatore outside the limits of the Town. Ignoring the objections of the husband of the first Petitioner, the third Respondent acquired the lands and reported to the second Respondent Collector. Based on the recommendation of the second Respondent, the first Respondent had notified the same in the gazette. Therefore, the Petitioners had approached this Court to quash the gazette notification acquiring the property where there were buildings and tenants are residing which income was used for



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the Petitioners' family. The Writ Court allowed the Writ Petition and quashed the Government notification acquiring property belonging to the family of the Petitioners.

3. Aggrieved by the same, the State preferred Writ Appeal. In the Writ Appeal, the order passed by the learned Single Judge was reversed and was set aside. Therefore, the Petitioners in the Writ Petition who are the Respondents in the Writ Appeal filed Review Petition. The Review Petition was also dismissed. Therefore, the owner of the property had moved Special Leave Petition (Civil Appeal) before the Hon'ble Supreme Court. The Hon'ble Supreme Court had passed orders remanding the matter back to the Division Bench of this Court to consider the arguments of both parties and pass fresh orders. Therefore, the Writ Petition is before this Division Bench. In the meanwhile, the first, second and third Petitioners in the Writ Petition viz., Rukmani, Lakshmi and Nachimuthu Gounder died and their legal heirs have been impleaded as Petitioners 5 to 7.

4. The properties originally belonged to Subbakkal, W/o.Kaliappa Gounder. Subbakkal is the mother of the Petitioners 1 to 3 herein. She had executed a Will whereby the properties belonging to her was allotted to her legal heirs after her life time.



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She had retained the life estate for maintenance of herself and her husband Kaliappa Gounder. The land acquisition proceedings commenced on the ground that the land owner Kaliappa Gounder given his consent for the land acquisition proceedings. The husband of Subbakkal viz., Kaliappa Gounder did not have absolute right in the properties. Therefore, he has no right to give consent for the land acquisition. The Land Acquisition Authorities under the Land Acquisition Act, 1894 had not considered that there was partition regarding the properties and the Will executed by Subbakkal in favour of the legal heirs. Therefore, the legal heirs of Subbakkal objected to the land acquisition proceedings as they are the original owners of the properties. Their objection was not considered.

5. It is the contention of the learned Counsel for the Writ Petitioners that as per the provisions of the then Land Acquisition Act, 1894, there shall be clear notice of 60 days to the land acquisition notification seeking objection from the owner of the property. After this notice and after hearing the objection, the Land Acquisition Officer who is the Collector, but as per the Act, it is the Tahsildar who is exercising the powers of the Collector in Tamil Nadu, had made recommendation rejecting the objection for acquiring the lands as per Section 6(1) of the then Land Acquisition Act, 1894,



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which is against the provisions of the Land Acquisition Act, 1894.

Therefore, the conduct of the third Respondent was against the provisions of the then prevailing Land Acquisition Act, 1894. Further, when the land or properties were acquired for public purpose, even though there is objection by the owner of the property, the Land Acquisition Officer had to deposit the compensation amount in the Court having jurisdiction over the land acquisition proceedings. In this case, no amount was deposited. Further, there was a correspondence between the Collector and the Government that as on the date of acquisition of the property, enough fund was not available with the Collector to pay compensation to the land loser. Therefore, the Collector recommended for cancellation of the scheme. In the light of the same, the Writ Court had quashed the notification issued by the Government in the gazette of Tamil Nadu notifying the Acquisition of the land/property belonging to Petitioners at Ganapathy Village in Coimbatore District. But, till date, the Government has not deposited any amount. Therefore, in the light of the fact that the Government has not deposited the amount of compensation till date, the Writ Petitioners had lost their income. In the meanwhile, the Writ Petitioners approached the Civil Court and filed a suit for eviction against the tenants who were working in the mills in Coimbatore and who belong to Scheduled Caste community.



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The suit was decreed in favour of the owner of the properties. As the proceedings in the land acquisition were challenged and the matter was in the Court, the Writ Petitioners, who are the landlords/owners of the property is waiting for execution proceedings against the tenants. Therefore, the notification is to be quashed and the Writ Petition is to be allowed.

6.Further, as per the then prevailing Land Acquisition Act, 1894, the Land Acquisition Officer had passed the award directing compensation to the land loser but till date the compensation amount had not been deposited. Therefore, the award passed by the Land Acquisition Officer is null and void.

7.It is the further contention of the learned Counsel for the Petitioners that Nachimuthu Gounder objected to the land acquisition in Survey No.141/2 in Ganapathy Village on the ground that in the land proposed to be acquired, there were buildings which were already let out on rent for eking out his livelihood. Except this land/house site, he does not own any other property. He depends on the rent from this property for his livelihood. Subsequent to his death, his legal heirs have been in possession and enjoyment of the same. Therefore, that is the only property owned by them on which



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they depend on their livelihood and there are properties available outside the Town that can be acquired by the Land Acquisition Officer for putting up construction for the landless Harijans. This objection was not at all considered by the Authorities.

8. It is the further submission of the learned Counsel for the Petitioners that proper enquiry was not at all conducted and no compensation was paid to Nachimuthu Gounder or to his Legal heirs/Petitioners herein. Those who are residing in the buildings in Survey No.141/2 are Harijans who are employed in the Mills at Coimbatore and getting regular monthly salary. Therefore, they are not landless poor people. Further the then District Collector had addressed the Government regarding the objection of Nachimuthu Gounder as well as the compensation amount not having been deposited towards compensation after the award was passed. Meanwhile, the owner of the land/property had addressed the Government to release the land acquired by the Government.

9. Mr.R.N.Amarnath, learned Counsel for the Petitioners had relied on the following rulings:

(i) **(2011) 9 SCC 164** in the case of **Devender Kumar Tyagi and others Vs. State of Uttar Pradesh and others**, the relevant



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portion of which reads as follows:

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"12. The notification under Section 4 has to be published in the manner laid down therein. As against this, under Section 6, a declaration has to be first made and that declaration is then to be published in the manner provided in Section 6 (2) of the LA Act. Also, proviso (ii) to Section 6(1) lays down a time-limit within which the declaration has to be made. The said proviso (ii) significantly only provides a time-limit for a declaration and not for publication as it has been incorporated in sub-section (1) of Section 6 of the LA Act."

(ii) **2007 SCC Online Mad 278** in the case of **Kolammal (deceased by L.Rs.) & Anr. Vs. State of Tamil Nadu & Ors.**, the relevant portion of which reads as follows:

"12. It is clear that the prior approval of the State Government or the authorised officer is mandatory and any award made in violation thereof renders the award non-est. Passing award with prior approval of the competent authority or the competent officer is a condition precedent."

(iii) **(1994) 5 SCC 686** in the case of **State of U.P and others Vs. Rajiv Gupta and another**, particularly paragraph No.6 of the said Judgment reads as follows:

"6. Section 11 postulates of conducting an enquiry and making the award by the Collector. The first proviso envisages that "no award shall be made by the Collector under sub-section without the previous approval of the appropriate Government or of such officer as the appropriate Government may authorise in this behalf". It is common knowledge that exercising the power under the first proviso, the appropriate Government made rules or statutory orders or instructions whatever be the nomenclature, they have statutory operation giving authorisation to the Land Acquisition Collector to make an award up to a particular pecuniary limit without prior approval either of the appropriate Government or an officer authorised by the appropriate Government in that behalf. If the award exceeds the limit, prior approval of the State Governments or authorised officer is mandatory. Any award made in violation



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thereof, renders the award non est and void as it hinges upon the jurisdiction of the Land Acquisition Collector or Officer. No doubt, Mr. Markandeya is right that the State had not produced before us rules or orders issued under the first proviso to Section 11 that the Land Acquisition Officer shall not make an award exceeding one crore of rupees without prior approval of the Commissioner, namely, Commissioner, Board of Revenue. But nonetheless, there is a statutory inhibition by first proviso to Section 11 that the prior approval either of the appropriate Government or of an officer which the appropriate Government authorises in that behalf, is mandatory for making an award. It is a condition precedent. Obviously, for this reason, the Collector in his letter dated 20.12.1992, addressed to the Commissioner, seeking prior approval thus:

"Proposed award"

(iv) **(2005) 7 SCC 627** in the case of **Hindustan Petroleum Corporation Ltd., Vs. Darius Shapur Chennai and others,** particularly Paragraph Nos.15 and 19 of this Judgment reads as follows:

"15. Section 5-A of the Act is in two parts. Upon receipt of objections, the Collector is required to make such further enquiry as he may think necessary whereupon he must submit a report to the appropriate Government in respect of the land which is the subject-matter of notification under Section 4 (1) of the Act. The said report would also contain recommendations on the objections filed by the owner of the land. He is required to forward the records of the proceedings held by him together with the report. On receipt of such a report together with the records of the case, the Government is to render a decision thereupon. It is now well settled in view of a catena of decisions that the declaration made under Section 6 of the Act need not contain any reasons. (See Kalumiya Karimmiya V. State of Gujarat and Delhi Admn. V. Gurdip Singh Uban)

19. Furthermore, the State is required to apply its mind not only on the objections filed by the owner of the land but also on the report which is submitted by the Collector upon making other and further enquiries therefor as also the recommendations made by him in that behalf. The State Government may further



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inquire into the matter, if any case is made out therefor, for arriving at its own satisfaction that it is necessary to deprive a citizen of his right to property. It is in that situation that production of records by the State is necessary."

10.The learned Counsel for the Petitioners Mr.R.N.Amarnath also invited the attention of this Court to the provisions of The Land Acquisition Act, 1894 which reads as under:

"THE LAND ACQUISITION ACT, 1894

**AUTHORISATION OF OFFICERS TO APPROVE AWARDS
AMENDED BY THE LAND ACQUISITION (AMENDMENT)
ACT, 1894**

(CENTRAL ACT LXVIII OF 1894)

(G.O.Ms.No.2003, Revenue, Dated 13th December,

1984)

1.Govt. Telex No.44790 C1/82-19, Revenue, dated 1st October 1984.

2.Govt. Telex No.44790 C1/82, Revenue, dated 30th November 1984.

ORDER: - The notification appended to this order shall be published in the next issue of *Tamil Nadu Government Gazette*.

2. The Works Manager, Government Central Press is requested to furnish fifty copies of the said Notification each to the Government in Revenue Department, Special Commissioner and Commissioner of Land Administration, All Collectors/Additional Collectors/District Revenue Officers and all Departments of Secretariat (except Finance, P & D., and P & AR Department.

3. All the Collectors/Additional Collectors/District Revenue Officers are informed that any award passed on or after 24th September 1984 should be in accordance with the provisions of the [Land Acquisition Act, 1894 \(Central Act 1 of 1894\)](#), as amended by the [Land Acquisition \(Amendment\) Act, 1984 \(Central Act 68 of 1984\)](#). Accordingly, the awards, if any, passed on or after 24th September, 1984, have to be revised in accordance with the said provisions and the



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previous approval of the appropriate officer authorised under the notification appended to this order should be obtained.

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APPENDIX

NOTIFICATION

Under the first proviso to sub-section (1) of [section 11](#) of the Land Acquisition Act, 1894 ([Central Act I of 1984](#)), as amended by the [Land Acquisition \(Amendment\) Act, 1984](#) ([Central Act 68 of 1984](#)), the Governor of Tamil Nadu hereby authorises,-

(i) the Commissioner of Land Administration to approve every award in which the total compensation to be allowed exceeds ten lakh rupees; and

(ii) the District Collector to approve every award in which the total compensation to be allowed does not exceed ten lakhs rupees."

11. He had also invited the attention of this Court to the provisions of The Land Acquisition (Tamil Nadu) Rules which reads as under:

"THE LAND ACQUISITION (TAMIL NADU) RULES

In exercise of the powers conferred by Section 55(1) of the Land Acquisition Act I of 1894, as amended by the Land Acquisition (Amendment) Act XXXVII of 1923. His Excellency the Governor-in-Council is pleased to make the following rules after previous publication: -

1.Issue and publication of notice by the Collector.-

Immediately after the publication of the notification under [Section 4\(1\)](#), the Collector shall issue a notice stating that the land is needed or is likely to be needed, as the case may be, for a public purpose and requiring all persons interested in the land to lodge before the Collector within 30 days after the issue of the notification, a statement in writing of their objections, if any, to the proposed acquisition. This notice should be published at convenient places in the locality, and copies thereof fixed up in the office of the Collector, the Tahsildar, and in the nearest Police Station.

2.Statement of objections.- The statement of



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objections should mention how the objector is interested in the land.

3.Hearing of objections.- (a) If a statement of objections is filed by a person who is not interested in the land, it shall be summarily rejected.

(b) If any objections are received from a person interested in the land and within the time prescribed in Sub-section (1) of **Section 5-A**, the Collector shall fix a date for hearing the objections and give notice thereof to the objector as well as to the department or company requiring the land where such department is not the Revenue Department. Copies of the objections shall also be forwarded to such department or company. The department or company may file on or before the date fixed by the Collector a statement by way of answer to the objections and may also depute a representative to attend the enquiry.

Explanation.- For the purpose of this sub-rule, the Revenue Department shall be deemed to include the departments of Harijan Welfare and Backward Classes at the district level."

(G.O.Ms.No.996, Revenue, dated 19th May, 1976)

(C) On the date fixed for enquiry or any other date to which the enquiry may be adjourned by the Collector, the Collector shall hear the objector or his pleader and the representative, if any, of the department or company and record any evidence that may be produced in support of the objections.

4.Collector's report to Government.- On completion of his enquiry, the Collector shall submit the case for the decision of the Government through the Board of Revenue in the manner provided in Section 5-A(2) of the Land Acquisition Act.

5.Further procedure on Government's decision for or against the acquisition.- On a consideration of the objections and the Collector's report thereon, if Government decide that the land should be acquired, the declaration required under Section 6 of the Act should be submitted by the Collector of the district or collectors of the districts concerned to Government for approval and publication in the Official Gazette.



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If on the other hand, the Government decide to drop the acquisition, a cancellation notification under Section 4(1) of the Land Acquisition Act, 1894 (Central Act I of 1894) read with Section 21 of the General Clauses Act, 1897 (Central Act X of 1897) shall be published by them in cases, where a notification under Section 4(1) of the Land Acquisition Act has been issued but has been followed by a declaration under Section 6 of the said Central Act I of 1894 and also in cases where the mistakes in the notification under the said Section 4(1) could not be rectified by the issue of an erratum, and that in all other cases, a notification under Section 48(1) of the Central Act I of 1894 withdrawing from such acquisition, shall be published by them.

(G.O.Ms.No.2855, Revenue, dated 27th November, 1969)

Rule 6.- In the rules word "Government" means the "Government of Tamil Nadu"."

12.Based on the above rulings and the provisions, the learned Counsel for the Petitioners submitted that the Writ Petition is to be allowed and the notification regarding the Land Acquisition of the Petitioners' land may be quashed.

13.Mrs.Tamilselvi, learned Additional Government Pleader appearing for the Respondents 1 to 3 by way of reply submitted that as per Section 11 of the then prevailing Land Acquisition Act, 1894, the Land Acquisition proceedings cannot be set aside on the ground that just because compensation amount had not been deposited or granted by the Government to the owner of the property. In support of her submission, she relied upon the following rulings of the



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Hon'ble Supreme Court and this Court:

WEB COPY (i) **1996 (II) CTC 746** in the case of **Sundara Naicker Vs. The State of Tamil Nadu & Another.**

(ii) **AIR 1996 SCC 2677** in the case of **Ajay Krishan Shinghal, etc. Vs. Union of India and others.**

(iii) **AIR 1985 SCC 239** in the case of **Madhav Gopalrao Sanap Vs. State of Maharashtra and others** wherein for the delay, it is stated that Government can pay the interest on the award for the delay in payment of compensation.

(iv) **1997 (II) CTC 543** in the case of **Municipal Corporation of Delhi Vs. Lichho Devi and Ors.**

(v) **2020 8 SCC 129** in the case of **Indore Development Authority Vs. Manoharlal and Others.** The relevant portion of which reads as follows:

“(4) The only two possible consequences of non-deposit of compensation as per S. 31 (2) of the 1894 Act in Court, or deposit of compensation in State treasury as per applicable Rules and Standing Orders are: either (A) higher compensation in terms of S.24(2) proviso if it is attracted in the facts of the case, or, (B) interest as envisaged under S.34 of the 1894 Act.

-S. 34 of the 1894 Act is in *pari materia* with S.80 of the 2013 Act in which similar rate of interest is specified – Even assuming deposit in the Reference Court is taken to be mandatory, in that case too the only consequence is that interest has to follow as specified in S. 34 of the 1894 Act, but the 1894 Act acquisition proceedings shall not lapse therefor under S.24(2).

(5) Word “deposited” in S. 24(2) proviso is distinct from word “paid” used in S.24(2) – Word “deposited” in S.24(2) proviso has to be interpreted and given the meaning which it had under the 1894 Act regime i.e., deposit in Reference Court, or, deposit in State treasury as per applicable Rules and Standing Orders.”



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14. Considering the rival submissions and on perusal of the records, we find that the arguments advanced by Mr.R.N.Amarnath, learned Counsel for the Petitioners/land losers, placing reliance on the rulings viz., (i) **(2011) 9 SCC 164** in the case of **Devender Kumar Tyagi and others Vs. State of Uttar Pradesh and others;** (ii) **2007 SCC Online Mad 278** in the case of **Kolammal (deceased by L.Rs.) & Anr. Vs. State of Tamil Nadu & Ors.**, (iii) **(1994) 5 SCC 686** in the case of **State of U.P and others Vs. Rajiv Gupta and another** and (iv) **(2005) 7 SCC 627** in the case of **Hindustan Petroleum Corporation Ltd., Vs. Darius Shapur Chennai and others**, are acceptable for the reason that the objection by the land owner that there were tenants in the property and the land owner was deriving the income for the family expenses from the buildings that were intended to be acquired, was ignored. In the alternative, he had pointed out that lands are available outside the Town in Ganapathy Village, Coimbatore District which was not considered by the Land Acquisition Officer. Further, from the date of notice, after hearing the objections, the award was not passed within the stipulated time. Therefore, there was violation of the conditions in the then prevailing Land Acquisition Act, 1894. More over, the Collector had addressed the Government stating that since there was no amount available with the Collector to compensate the land loser,



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the request for release of the land by the Writ Petitioners need to be considered. (Letter from District Collector in reference No.47610/88

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N8, dated 25.01.1996 addressed to the Special Commissioner, Secretary to Government, Adi Dravidar and Tribal Welfare Department, Secretariat, Madras – 600 009). In spite of the same, the Government went to further stage of issuing notification for acquiring the lands, where there were buildings from which the family was deriving income and except this property, the owner does not have any other property. Therefore, it affects their livelihood. As per the then Land Acquisition Act, 1894, where there are buildings from which the owner of the property derives income, such lands cannot be acquired for the purpose of constructing houses for the landless poor. Here there are tenants, who are occupying the property belonging to the Petitioners' family, who are drawing salaries from the Mills in Coimbatore and were paying rents to the landlord. Therefore, they are not landless poor. Here the property under acquisition proceedings had buildings/houses where there were tenants. Therefore, the action of the Government ignoring the objections and proceeding with the land acquisition without paying any compensation is found illegal. As pointed out by the learned Counsel for the Petitioners/owners of the land, till date, the compensation amount had not been deposited. Also, the District



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Collector in his letter in reference No.47610/88 N8, dated 25.01.1996 had stated that there had been partition between the legal heirs of Kaliappa Gounder. This fact was not brought to the notice of the Land Acquisition Officer. Under those circumstances, the District Collector had addressed the Special Commissioner, Secretary to Government, Adi Dravidar and Tribal Welfare Department, stating that the request for release of the land by the Writ Petitioners need to be considered. Already 36 years had gone by from the date of notification in the gazette. Therefore, the action of the Government is found unfair and unacceptable, because we also do not find any justification on the part of the Government for acquiring the land without paying compensation. Therefore, at this length of time, the action of the Government in upholding the notification for acquisition of the land/properties of the writ Petitioners is highly unacceptable in the eyes of law. Therefore, the notifications are liable to be set aside.

15.The rulings relied on by the learned Additional Government Pleader for the respondents 1 to 3 are with regard to the maintainability of the Land Acquisition proceedings stating that non-deposit of compensation will not vitiate the proceedings. That is not the only point involved in this case. It is the submission of the



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learned Counsel for the Petitioners that the original owner of the Property viz., Nachimuthu Gounder was having only this property on which he was dependant for his livelihood. There was superstructure in the property which was let out on rent to the workers of the Mills in Coimbatore. The workers in the Mills were the tenants of the original Nachimuthu Gounder who were all Harijans and they are not landless poor and they had regular income from the Mills in Coimbatore. The purpose of land acquisition was for the construction of houses for the landless poor. While so, the objection raised by Nachimuthu Gounder that the property notified for acquisition belongs to Nachimuthu Gounder, which is his only property on which he ekes out his livelihood, was ignored by the Authorities. He has also mentioned that when there are vacant sites available in the same Village and outside Town, the same was not considered by the Land Acquisition Authorities. Besides, there was delay in publication of the notice under Sections 4 (1) and 6 of the Land Acquisition Act, 1894, which were beyond the period of limitation.

16.The District Collector, on 25.01.1996, had addressed a detailed letter to the Government in which it is stated as follows:

"Sir,

Sub: Adi Dravidar Welfare – Coimbatore North Taluk
– Ganapathi Village – S.F.No.142/1 – 1.52
Acres – acquisition for the provision of House



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sites to Adi Dravidars – W.P. No.5220/87
objection to the acquisition – report
submitted.

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- Ref: 1.Govt. letter No.38733/LA.3/94-2, dated 24.4.95.
2.Govt. Endt. No.38922/LA.III/95-1, dated 15.9.95.
3.Govt. letter No.42521/LA.III/90-15, dated 1.11.95.

In the references Ist and IIInd cited, the Government have called for detailed report on the petitions preferred by Tmt.Sivagami, Rukmani, Lakshmi and one Nachimuthu Gounder of Coimbatore, requesting cancellation of the acquisition of the land in S.F.No.142/1 of Ganapathy Village, Coimbatore (North) Taluk.

The land measuring 1.52 acres in S.F.No.142/1 of Ganapathi Village was originally proposed for acquisition for the provision of house sites to the Adi Dravidars of Ganapathi Village under the provisions of L.A. Act I of 1894. One Thiru.Kaliappa Gounder, the then enjoyer of the land (who deceased on 13.2.79), anticipating the acquisition, permitted a few number of Adi Dravidars to enter upon the land in S.F.No.142/1 and allowed them to construct houses of their own for their occupation in the land subject to the payment of Ground Rent to the then enjoyer of the land. On the proposals recommended to the Government for acquisition of this land, the Government in their Memo No.24380/HW.VI/73, dated 20.3.74 have accorded permission to acquire the land with a condition that 25% of the cost of acquisition should be borne by the Local Panchayat Board. The Panchayat Board then also consented for payment of 25% of the cost. Accordingly, necessary Land Acquisition proposals for the land measuring 1.52 acres in S.F.No.142/1 were recommended to the Government by Collector on 1.8.78.

Pending consideration of the proposals by the Government the Tamil Nadu Acquisition of lands for Harijan Welfare Schemes Act 1978 came into force with effect from 24.9.79. Hence, as instructed by the Government proposals for acquisition of the land were initiated under the provisions of the T.N. Act 31/78 and followed by the statutory enquiry contemplated u/s 4(2)



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of the Tamil Nadu Land Acquisition Act 31/78, notice u/s 4(1) of the T.N. Act was got published in the Dt. Gazette. The land owners/petitioners did not attend the Award enquiry on 31.1.81 and pleaded for postponement of the enquiry for 3 weeks. The plea of the land owners/petitioners was negatived and the Award/under the provision of Tamil Nadu Land Acquisition Act 31/78 was passed in Award No.2/81 dated 31.1.81 by the Special Tahsildar (Adi Dravidar Welfare) Coimbatore and the compensation amount due for the land Rs.34,960/- was ordered to be paid into civil court, as per the Award No.2/81 dated 31.1.81.

Aggrieved by the Award passed in Award No.2/81 dated 31.1.81, the land owners/Petitioners filed a Writ Petition No.849/81 challenging the validity of the Tamil Nadu Land Acquisition Act 31/78 and obtained stay in W.M.P.No.1196/81. Consequent on the pronouncement of common judgment by the High Court, striking down of the T.N.L.A. Act 31/78 as invalid proposals for acquisition of the land under the urgency provision of Land Acquisition Act 1894 were recommended to the Government. But the Government did not agree to approve the proposals under the urgency provisions in view of the judgment of the High Court in W.P. challenging the invoking of urgency provision for Harijan Welfare Schemes. Therefore, D.N. u/s 4(1) D.D. u/s 6 and D.D. u/s 7 of the L.A. Act 1894 under the ordinary provision were got approved by the Government and the notifications were published in T.N.G.G. in news dailies and the Village as required in rules. Aggrieved by the approval of D.D. u/s 6 in G.O.Ms.No.1536/SWD dated 18.8.86 and publication in Gazette, the landowners/petitioners again chose to file a W.P.No.5220/87 and obtained stay orders in W.M.P.No.7560/87 dated 20.5.87. The interim stay granted by the High Court was subsequently made absolute and confined to dispossession of the land from the petitioner as per the order of High Court, dated 19.8.87. Brief history and parawise remarks were furnished to Government Pleader, High Court on 29.8.87. Fair counter Affidavit was also already sent by the Special Tahsildar (ADW) Coimbatore direct to the Government Pleader for filing in the High Court. The Writ Petition is



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still pending on the file of the High Court and the stay already ordered is in force.

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In as much as the stay ordered by the High Court, Madras was confined to dispossession alone, the Award u/s.11 of the Land Acquisition Act 1894 was passed on 21.9.88 in Award No.1/88-89 dated 21.9.88. The compensation amount due for the land acquired in S.F.No.142/1 i.e., Rs.4,19,943.05 was ordered to be deposited with the Civil Court u/s 31(2) of the Land Acquisition Act I of 1894 as per the Award passed on 21.9.88. Though the compensation amount due for the land i.e., Rs.4,19,943.05 was ordered to be deposited with the Civil Court and for reference to Court u/s.31(2) of the Land Acquisition Act I/1894 for adjudication, the amount of compensation is not yet adjusted to the credit of Civil Court deposit till date as the reference u/s 31(2) made to the court was returned for rectification of defects and hence the validity of the Treasury cheque for Rs.4,19,943.05 issued on 13.3.89 was already lapsed. As such the compensation amount ordered to be remitted into the Civil Court deposit as per the Award No.1/88 dated 21.9.88 is still remain in abeyance. Separate action is being pursued for revalidation of treasury cheque.

Such being the position, the land owners/petitioners have now sought to prefer petitions to the Government pleading for release of the land in S.F.No.142/1 from acquisition. The grounds put in by the petitioners are given in brief.

Para 1.The Petitioners viz., Sivagami & 3 others jointly own only the land measuring 1.52 acres in S.F.No.142/1 which has been ordered for acquisition, that they are depending solely upon the meagre extent of land to make out their livelihood and that they have no source of income other than the Ground Rent/House rent derived from the occupying Adi Dravidars in the land.

REMARKS: At the time of submission of proposals for acquisition of this land as the beneficiaries were already permitted to enter upon the land to occupy the land by the then enjoyer one Kaliappa Gounder deceased father



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of the petitioners.

Para 2. That the land in S.F.No.142/1 was originally belonging to one Subbakkal, W/o. the then enjoyer of this land Kaliappa Gounder, and the mother of the Petitioners viz., Tmt. Sivagami, Rukmani, Lakshmi and one Pechiammal, Tmt.Subbakkal and Kaliappa Gouner no more. By virtue of a Partition Deed Doct.No.2021/20.6.55 effected among Subbakkal, her sons Kandasamy Gounder and Ramasamy Gounder (mother and brothers of the petitioners) each one of them owned 1.57 acres of land in S.F.No.142/1 of Ganapathy Village and Subbakkal expired on 29.4.67.

REMARKS: In as much as the acquisition proposals were initiated with the consent of one Kaliappa Gounder, then enjoyer of the land, the ownership over the land was not considered into as the partition deed was not brought to the notice of the Land Acquisition Officer at the time of enquiry.

Para 3. That the land which was originally owned by Subbakkal, mother of the Petitioners was subsequently bequeathed to the Petitioners/daughters of Subbakkal by virtue of the will deed document executed by Subbakkal and that Thiru.Kaliappa Gounder husband and the then enjoyer of the land and further of the Petitioners had no legal right to dispose of the land, encumber in any way and to give consent for acquisition or to give away the land to the Adi Dravidars for the occupation, and that Kaliappa Gounder who alleged to have given the consent for acquisition has only a limited right over the land just to enjoy the land till his life time in order to eke out his livelihood.

REMARKS: The execution of the Will deed by Subbakkal in favour of the petitioners and its contents were not brought to the notice of the Land Acquisition Officer and hence, the consent statement given by the enjoyer Kaliappa Gounder was relied upon for proceeding for acquisition.

Para 4. That the petitioners are the real owners of the land in S.F.No.142/1 for 1.57 acres and that they have



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not given any consent for acquisition and the alleged consent said to have been given by Kaliappa Gounder, father of the petitioners and their brothers Kandasamy Gounder and Ramasamy Gounder are not legally valid in accordance with law as they were not the owners of the land.

REMARKS: The consent of the Petitioners were not insisted by the Land Acquisition Officer then due to lack of details of ownership and non-production of any title deed or will deed and only the consent of Kaliappa Gounder said to have been given as early as in 1970 was taken into consideration for proceeding for acquisition.

Para 5. That without verifying the real ownership of the land with reference to documents etc., as to whether Kaliappa Gounder has got any ownership over the land and the legal right to alienate the land, acquisition was proceeded with without any enquiry with the actual owners of the land.

REMARKS: Only the consent said to have been given by Kaliappa Gounder for acquisition during 1976 and the consent statement given by Kandasamy Gounder and Ramasamy Gounder, brothers of the Petitioners were alone taken into consideration that the documents were not insisted at the entire proceedings of Land Acquisition. They did not produce any documents to support their right over the properties. The dispute over the land would be decided by the Court at the time of appointment of compensation deposited in the Sub Court.

Para 6. That each of the Petitioners own jointly 1.57 acres to tally and only an extent of 0.39 acre individually and that their father (late) Kaliappa Gounder, brothers Kandasamy Gounder and Ramasamy Gounder connived together to deprive the Petitioners from their meagre extent of land owned by them and not give them any bit of land and that they being female gender, they have been victimised by their deceased father and brothers.

REMARKS: No remarks.

PARA 7. That Kaliappa Gounder the then enjoyer of the



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land and father of the petitioners who said to have given the alleged consent for acquisition during 1976 was deceased as early as on 13.02.1979 and that taking the alleged consent given by the deceased Kaliappa Gounder as valid record for the purpose of acquisition of the land during after the lapse of 9 years is against the law and natural justice.

REMARKS: In as much as the beneficiary Adi Dravidars have already entered upon the land in S.F.No.142/1 the acquisition of the land was proceeded with under the provisions of the L.A. Act I 1894.

PARA 8. That the compensation amount ordered for payment into Civil Court has not reached the Court Deposit as ascertained from the Court and that their right to claim for payment of compensation amount for the land and further claim for payment of enhanced compensation have been denied to them.

REMARKS: A sum of Rs.34,960/- towards compensation was already drawn and deposited on 31.11.81 in Civil court deposit as per award under the Tamil Nadu Acquisition of lands for Harijan Welfare Schemes Act, 1978. For the compensation amount of Rs.4,19,943.05 ordered for deposit into Civil Court u/s. 31(2) of the Land Acquisition Act I of 1894 was not yet adjusted to the credit of Court deposit due to administrative reasons as explained above.

Para 9. That the occupying Adi Dravidars/Beneficiaries refused to pay the Ground Rent/House Rent to the petitioners on account of the acquisition of land ordered and that the petitioners have filed R.C.O.P. cases in the Civil Court and cases are pending trial in the Court.

REMARKS: No Remarks.

PARA 10. That in as much as the compensation amount was not remitted into the Civil Court and reference for adjudication was not made to the Court till date, the compensation amount is still available with the Government account and that there is no pecuniary loss to the Government in releasing the land from acquisition.



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REMARKS: One portion of compensation of Rs.34,960/- has been deposited in Civil Court deposit. The compensation amount has not been deposited into the Civil Court and the reference u/s.31(2) of the Land Acquisition Act was not also sent to the Court. The Treasury cheque for the compensation amount of Rs.4,19,943.05 was already lapsed and the Government have been addressed for the specific sanction of the amount involved in this case.

PARA – 11. That the occupying Adi Dravidars are also not affected by the leasing of the land in S.F.No.142/1 as they can be provided alternate site somewhere also and that the buildings in which they occupied are not of much value.

REMARKS: No remarks.

In conclusion, the petitioners sought for cancellation of the acquisition already ordered in Award dated 31.11.81 and 21.9.88 citing the vital issues mentioned below for consideration:

The consent for acquisition was given by their deceased father Kaliappa Gounder who had no legal right of the ownership and no locus standi to encumber the land.

The alleged consent given by Kaliappa Gounder as early as in 1976 was taken as a basic record for compulsory acquisition even after his demise on 13.2.79 while proceeding with acquisition during 1984.

It cannot be argued that there is no loss to Government. The Government have incurred certain amount in the land Acquisition proceedings to the stage of award. This is a loss. The aggrieved persons have preferred W.M.P.No.7560/87 in W.P.No.5220/87 in High Court, Madras seeking judicial remedy by having challenged the land proceedings and the same is pending in High Court in as much as the Writ Petition is pending in High Court the result of judgment is necessarily to be awaited and the question of request for cancellation of Land Acquisition need be considered on receipt of judgment."



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17. From the perusal of the above letter, as per the then prevailing Land Acquisition Act, 1894, the procedures were not at all followed. Consent was alleged to have been obtained from a person having no legal right to give consent viz., Kaliappa Gounder, the husband of Subbakkal, who had only limited right to enjoy the land in his life time. He was receiving the rent from the tenants who happened to be Harijans in the structures in the property. Subbakkal had executed a Will bequeathing the property in favour of the Petitioners in the Writ Petition who are her daughters. Subbakkal had entered into partition with her sons Kandasamy Gounder and Ramasamy Gounder through partition deed. These things were not brought to the consideration of the Government while considering Land Acquisition. Proper enquiry was not conducted. The notification under Section 4 of the Land Acquisition Act, 1894 was not published in the manner laid down within the specified time. From the date of notification under Section 4 of the Land Acquisition Act, 1894 notification under Section 6 of the Land Acquisition Act, 1894 had to be published within time. Here, there was a delay in the acquisition from the date of notification under Section 4 and the date of notification under Section 6 of the Land Acquisition Act, 1894. 25% of the amount by the Local Panchayat was not deposited. The



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compensation amount was not referred to the referring Court. As per the District Collector's letter, the award amount was lapsed. As per the letter of the District Collector sent to the Government pending Writ Petition the request for the release of the land by the Writ Petitioners need to be considered.

18. In those circumstances, the reliance placed by the learned Counsel for the Petitioners in the above rulings is found acceptable in the facts and circumstances of this case. During the prolonged proceedings, Nachimuthu Gounder depended on his livelihood and his legal heirs filed a Suit for ejectment of the tenants and obtained a decree. Under those circumstances, the only property where there was superstructure giving source of income to Nachimuthu Gounder and his legal heirs, is found justified. The earlier round of litigation was in favour of the Writ Petitioners viz., Nachimuthu Gounder. Therefore, the submission of the learned Counsel for the Petitioners, in the light of the above rulings, is applicable to the facts and circumstances of the case. Whereas the rulings relied on by the learned Additional Government Pleader is only with regard to deposit not having been made. Therefore, those rulings are not applicable to the case on hand. There are additional grounds in favour of the Petitioners that the notification under Section 4(1) of Land



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Acquisition Act, 1894 and the subsequent declaration under Section 6 of the Land Acquisition Act, 1894 were beyond limitation. The objection raised by the original owner of the property was not considered. After passing of the award, the award amount was also not deposited in the Court. Therefore, the Collector had addressed the Government stating that the request for release of the land by the Writ Petitioners need to be considered. In the light of these developments, the submission of the learned Additional Government Pleader basing her arguments on the reported rulings regarding delay in deposit of award amount will not vitiate the Land Acquisition proceedings, does not merit acceptance, on the facts of this case, therefore, those rulings are rejected.

19. As per the reported ruling of the Hon'ble Supreme Court in **(2011) 9 SCC 164 [Devender Kumar Tyagi and Others -vs- State of Uttar Pradesh and Others]**, relied on by Mr.R.N.Amarnath, learned Counsel for the Petitioners, the notification under Section 4 of the Land Acquisition Act, 1894 was not published in the manner laid down within the specified time and from the date of notification under Section 4 of the Land Acquisition Act, 1894 notification under Section 6 of the Land Acquisition Act, 1894 had to be published within time. Here, there was a delay in the acquisition



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from the date of notification under Section 4 and the date of notification under Section 6 of the Land Acquisition Act, 1894.

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20. As per the ruling in **2007 SCC OnLine Mad 278** in the case of **Kolammal (Deceased by Lrs.) and Another -vs- State of Tamil Nadu and Others**, prior approval of the State Government or the authorised officer is mandatory and any award made in violation thereof renders the award *non est*. Passing the award with prior approval of the authority is a condition precedent. This was not followed in this case, as per the letter of the District Collector in reference No.47610/88 N8, dated 25.01.1996 addressed to the Special Commissioner, Secretary to Government, Adi Dravidar and Tribal Welfare Department, Secretariat, Madras – 600 009.

21. As per the reported ruling of the Hon'ble Supreme Court in **(1994) 5 SCC 686 [State of U.P. and others -vs- Rajiv Gupta and another]**, Section 11 of the Land Acquisition Act, 1894 postulates the conduct of enquiry and making the award by the Collector. Here also 25% of the cost of the land had to be borne by the Panchayat that was not deposited in the Civil Court deposit. Further, enquiry regarding the objection by the landlord Kaliappa Gounder or his legal heirs were not at all considered by the Land



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Acquisition Officer/Tahsildar. As per the Land Acquisition (Tamil Nadu) Rules, the objection by the landlord was not at all considered by the Land Acquisition Officer. The District Collector had in his letter stated that the properties had been partitioned and that was not brought to the notice during the enquiry. The award amount towards compensation for acquiring of lands in the Survey Field No.142/1 was not deposited into Civil Court. Reference to the Civil Court regarding acquisition was not made under Section 31(2) of the Land Acquisition Act, 1894. The Treasury cheque for the compensation amount of Rs.4,19,943/- had lapsed. Therefore, the Government does not suffer any loss and the occupants/Adi-dravidars are not affected by the losing of the land in S.F.No.142/1, as they had been provided with alternate sites.

22. Further, the letter addressed by the District Collector shows that based on the outcome of the Writ Petition No.7360 of 1987 and Writ Petition No.5220 of 1987 cancellation of the Land Acquisition need to be considered. Pending all these proceedings, the land owners had partitioned the property and the earlier land enjoyer – Kaliappa Gounder did not have the right to give consent as the partition took place between the legal heirs and they had sought release of the land. The ownership of the land was not considered.



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Kaliappa Gounder – father of the Petitioners in the Writ Petition had no right to dispose of the land. The execution of the Will by Subbakkal – the property owner was also not brought to the notice of the Land Acquisition Officer. The consent letter alleged to have been given by the land enjoyer was relied on by the proceedings of the acquisition. Awaiting the outcome of the Writ Petitions, the advice/request of District Collector for cancellation of land acquisition need to be considered. As per the said ruling, the letter of the District Collector addressed to the Government found that the statutory instructions were not followed in this case, as per the Land Acquisition (Tamil Nadu) Rules.

23. As per the ruling in **(2005) 7 SCC 627 [Hindustan Petroleum Corporation Ltd., -vs- Darius Shapur Chennai and others]**, upon receipt of objections, the District Collector is required to make enquiry as he may think necessary and he must submit a report to the Government in respect of the land which is the subject matter of notification under Section 4(1) of the Act. The said report should also contain recommendations on the objections filed by the owner of the land. Here, no such enquiry was conducted based on the objections by the land loser - the daughters of Kaliappa Gounder. The report of the District Collector clearly states all the deficiencies



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in the acquisition proceedings in this case and ultimately he had advised the Government stating that the request for release of the land by the Writ Petitioners need to be considered. On the basis of the request by the Land Owners - the daughters of Kaliappa Gounder, as there was partition based on the Will of the mother of the petitioners - Subbakkal. This part was not at all considered in the enquiry and on the basis of the release of the land requested by the daughters of Subbakkal, the Collector had addressed the Government stating that the request for release of the land by the Writ Petitioners need to be considered.

24. Above all, the procedure enumerated under the Land Acquisition (Tamil Nadu) Rules, was not at all followed. Under these circumstances, the arguments advanced by the learned Additional Government Pleader Mrs.Tamil Selvi that just because compensation amount had not been deposited, the land acquisition proceedings need not be set aside, cannot at all be accepted, as there are violations right from the stage when notification under Section 4 came to be issued till the filing of the Writ Petition by the Petitioners. Therefore, considering the lapse of time and considering the land acquisition proceedings initiated right from the stage one, the District Collector had clearly pointed out the lapses and had sought to



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WEB COPY consider the request of the daughters of Subbakkal to release the land as their livelihood depends on the land in Survey Field No.142/1. Therefore, the arguments of the learned Additional Government Pleader by relying upon the rulings of the Hon'ble Supreme Court that just because the amount of compensation were not deposited in time, the acquisition proceeding cannot/need not be set aside, is rejected in the light of the reported rulings and the provisions of law cited by the learned Counsel for the Petitioners Mr.R.N.Amarnath and the report of the District Collector addressed to the Secretary to Government, Adi Dravidar and Tribal Welfare Department, giving out all these details. Therefore, this Writ Petition deserves to be allowed.

In the result, this Writ Petition is allowed as prayed for. Consequently, the notification issued by the first Respondent under Section 4(1) of the Land Acquisition Act, 1894 in G.O.Ms.No.1119, Social Welfare Department, dated 15.05.1985, the consequential declaration made by the first Respondent under Section 6 of the Act in G.O.Ms.No.1536, Social Welfare Department, dated 18.06.1986 and the award passed by the third Respondent in Award No.1/88-89 in Ref. No.1A 5/78, dated 22.09.1988, are quashed. No Costs.



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[T.R.,J.]

[S.S.K.,J.]

22.06.2022

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Index: Yes/No

Speaking/Non Speaking order

To

1. The Secretary to Government,
Social Welfare Department,
Fort St. George, Madras – 9.
2. The Collector of Coimbatore,
Coimbatore.
3. The Special Tahsildar (LA),
Adi Dravidar Welfare,
Coimbatore.



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**T.RAJA,J.
and
SATHI KUMAR SUKUMARA KURUP,J.**

srm

Order made in
W.P.No.5220 of 1987

22.06.2022