M/S. Mathew Enterprises vs Nithyanandam on 22 August, 2014

Author: P.R.Shivakumar

Bench: P.R.Shivakumar

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 22.08.2014
CORAM
THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR
C.R.P (NPD) Nos.3579 and 3557 of 2013
and
M.P.Nos.1, 1 and 2 of 2013

C.R.P (NPD) No.3579 of 2013

M/s. Mathew Enterprises
Having his office at
No.9, Old P.P.Amman Koil Street
Pallavaram, Chennai 600 043 ... Petitioner
vs.
1.Nithyanandam
2.Poornachandran
3.E.Selvaraj

4.The Special Tahsildar (LA)
Chennai Unit II
Chennai Metro Rail Limited
Gopalapuram, Chennai 600 086 ... Respondents

Civil Revision Petition filed under Article 227 of Constitution of India against the ord

C.R.P (NPD) No.3557 of 2013

Rep. By K.Mathew
M/s. Mathew Enterprises
Rep. By Mr.K.Mathew
Having his office at
No.9, Old P.P.Amman Koil Street
Pallavaram, Chennai 600 043 ... Petitioner
vs.
1.Poornachandran

2.The Tamil Nadu Housing Board

Nandanam
Chennai - 600 035

3.E.Selvaraj

4. The Special Tahsildar (LA)
Chennai Unit II
Chennai Metro Rail Limited
Gopalapuram
Chennai 600 086 ... Respondents

Civil Revision Petition filed under Article 227 of Constitution of India against the ord

For Petitioner : Mr.AR.L.Sundaresan,
Senior Counsel

For 1st Respondent: Mr.R.Thiyagarajan,
Senior Counsel for
(in C.R.P.No.3557/13) Mr.P.Seshadri

For 1st Respondent: Mr.M.N.Krishnamani,
Senior Counsel for
(in C.R.P.No.3579/13) Mr.P.Seshadri

COMMON ORDER

C.R.P.No.3557 of 2013 and C.R.P.No.3579 of 2013 have been preferred respectively against the orders of the learned VI Assistant Judge, City Civil Court (Reference Court), Chennai dated 03.09.2013 made in I.A.No.6356 of 2013 in L.A.O.P.No.50 of 2011 and I.A.No.6357 of 2013 in L.A.O.P.No.51 of 2011 on the file of the said Court.

2.For the sake of convenience, the parties are referred to in accordance with their rankings in C.R.P.No.3579 of 2013 and at appropriate places if it becomes necessary specific rankings of the parties in the other Civil Revision Petition shall also be given.

3.Originally a total extent of 20.60 acres of land comprised in various survey numbers in Koyambedu village was sought to be acquired by the Government of Tamil Nadu for the Housing scheme of Tamil Nadu Housing Board in 1975. The objection of the land owners was rejected and the Government proceeded with the acquisition of the entire land. The same was challenged in W.P.No.6169 of 1983 before this Court. A Division Bench of this Court allowed the writ petition on 22.04.1991 and quashed the notification under Section 4(1) of the Land Acquisition Act on the question of vagueness in the notification published under Section 4(1) of the Land Acquisition Act. Meanwhile, on 02.03.1991, a memorandum of understanding came to be entered into between Nithyanandam and Poornachandran (respondents 1 and 2 in the revisions) on the one hand shown as parties of the first part and their father Munirathinam Naidu and E.Selvaraj (3rd respondent in the revisions) as partners of M/s.M.S. Enterprises on the other hand shown to be parties of the second part in the said memorandum of understanding for the sale of 18.50 acres at the rate of Rs.17 lakhs per acre. In the said memorandum of understanding, the respondents 1 and 2 herein, namely

Nithyanandam and Poornachandran, were given a right to reserve for themselves two acres out of the total extent of 18.50 acres agreed to be sold. The said memorandum of understanding was cancelled by the respondents 1 and 2 on 02.11.1991.

4.A suit came to be filed as O.S.No.7704 of 1991 on the file of the City Civil Court, Chennai in the name of M/s.M.S.Enterprises represented by its partner Selvaraj against Nithyanandam, Poornachandran and others for a declaration that the cancellation of Memorandum dated 02.03.1991 was invalid and unenforceable in law and also for an injunction. After getting an order of status quo in the said suit, claiming to be a partner in M/s.M.S. Enterprises, Selvaraj entered into a memorandum of understanding with M/s.Southern Housing Corporation Limited, nominating the said company as purchaser to purchase the properties concerned in the memorandum of understanding dated 02.03.1991. He then filed another suit in O.S.No.6485 of 1992 in the name of M/s.M.S.Enterprises represented by Selvaraj. It came to be filed on the file of the City Civil Court against Nithyanandam and Poornachandran, (the respondents 1 and 2 herein), for a declaration that the memorandum of understanding between M/s.M.S.Enterprises and M/s.Southern Housing Corporation Limited was binding on Nithyanandam and Poornachandran, the respondents 1 and 2 herein. Nithyanandam and Poornachandran filed applications under Order VII Rule 11 CPC in both the cases. The learned VI Assistant Judge, City Civil Court, Chennai rejected the plaints in both the suits by orders dated 27.12.2004.

5.When an appeal on special leave came to be filed by the State before the Hon'ble Supreme Court in C.A.No.1957 of 1992 challenging the order of the Division Bench of this Court dated 22.04.1991 made in W.P.No.6169 of 1983, the Hon'ble Supreme Court differed from the view of the Division bench of the High Court and held that the notification issued under Section 4(1) of the Land Acquisition Act, declaration issued under Section 6 of the said Act and also the award passed by the Land Acquisition Officer were not found with any infirmity and upheld the acquisition of the above said land measuring 20.60 acres. However, taking into consideration the request of the land owners, who pleaded before the Supreme Court that the members belonging to the families of the land owners were totally 19 in number and they wanted to develop the property for their personal residential purpose, the Hon'ble Supreme Court, in its order dated 17.01.1996, chose to issue a direction directing the State Government to release an extent of 1.50 acres of land in the north eastern corner of the land comprised in S.No.167/1B abutting Poonamallee High Road from the acquisition so that the land owners, who were the respondents before the Supreme Court would be able to construct their own residential houses for their personal use in a compact block. It was also made clear that the order of exclusion made by the Supreme Court in the said case was not to be treated as a precedent and that since large number of persons in two families required personal accommodation, their Lordships gave the direction as a special case, that too, on an undertaking that the respondents therein would use the same only for their personal residential purpose. Pursuant to the above said order of the Supreme Court, the Tamil Nadu Government issued a notification on 16.07.1996 releasing 1.50 acres from the acquisition under Section 48 of the Land Acquisition Act, in favour of the interested persons.

6.However, the above said extent of 1.50 acres comprised in Old S.No.167/1B, renumbered as New S.Nos.2/2 and 2/3, came to be acquired for a different public purpose, namely Chennai Metro Rail

project. The Land Acquisition Officer for the Chennai Metro Rail Project passed an award in his Award No.3 of 2011 dated 02.05.2011 in which a total sum of Rs.12,78,05,026/- was awarded for the 75 cents comprised in S.No.2/2 and an equal amount for the other 75 cents comprised in S.No.2/3. Meanwhile, Poornachandran filed a suit on the original side of this Court in C.S.No.354 of 2006 against his brother Nithyanandam on the basis of agreement for sale dated 03.11.1991 for specific performance. In view of the acquisition proceedings, acquiring 1.50 acres comprised in S.Nos.2/2 and 2/3, they effected a compromise and based on the said compromise, a decree came to be passed in the said suit in C.S.No.354 of 2006 dated 25.08.2010 recognising the title of Poornachandran in respect of the entire land. Subsequently, a release deed was executed by Nithyanandam in favour of Poornachandran under a document registered as document No.4192 of 2011 on the file of the Sub Registrar, Anna Nagar. As such, there would not have been any difficulty for the Land Acquisition Officer to hold that the entire compensation amount for the above said land should go to Poornachandran in the absence of any claim by other persons. But, E.Selvaraj, the third respondent in the revisions, made a claim before the Land Acquisition Officer that he was a person having interest in the property acquired. Hence, the Land Acquisition Officer unable to decide apportionment made references under Sections 30 and 31(2) of the Land Acquisition Act in respect of New T.S.Nos.2/2 and 2/3. They were taken on file as L.A.O.Ps.50 of 2011 and 51 of 2011 respectively. Subsequent to the order of the Hon'ble Supreme Court upholding the acquisition and directing exclusion of 1.50 acres from acquisition, Poornachandran, the second respondent herein, entered into a compromise by virtue of an agreement dated 26.03.2012 whereby it was agreed that out of the compensation amount deposited into Court in the above said L.A.O.Ps, the third respondent E.Selvaraj should get Rs.1 crore in full quit of his claim and the balance amount should be received by Poornachandran, who was also authorised by the other owner, namely Nithayanandam as full and final settlement of all his claims. In accordance with the terms of the compromise, the learned VI Assistant Judge, City Civil Court (Reference Court), Chennai disposed the L.A.O.Ps by judgment and decree dated 26.04.2012 directing issuance of a cheque for the entire amount, namely Rs.12,78,05,026/- awarded in L.A.O.P.No.50 of 2011 and Rs.11,78,05,026/- out of the amount awarded in L.A.O.P.No.51 of 2011 to Poornachandran and the balance amount of Rs.1 crore to E.Selvaraj, the third respondent herein.

7.The agreement dated 12.06.2009 happened to be entered into in the name of K.Mathew without showing that he was representing M/s.Mathew Enterprises. However, the revision petitions came to be filed in the name of M/s.Mathew Enterprises represented by K.Mathew. The suit in O.S.No.2928 of 2012 was also filed in the name of M/s.Mathew Enterprises represented by K.Mathew. The impleading petitions were also filed in the name of M/s.Mathew Enterprises represented by K.Mathew. But no-where in those petitions, the nature of composition of the concern M/s.Mathew Enterprises was revealed. If at all, it was a partnership concern, it should have been stated so and necessary documents should have been filed to show that it was a registered partnership firm and that the person representing the firm was a registered partner. If it is a proprietary concern, Order XXX Rule 10 C.P.C does not permit the filing of the case by Proprietor in the name of proprietary concern and the benefit has been conferred only on the other persons who enter into transactions with such a person carrying on business in a name other than of his own. If it is an incorporated company, the petitioner should have been produced proof of incorporation and also necessary documents of authorisation, including the resolution to authorise K.Mathew to file the case

representing the company. A perusal of the contents of the petitions would show that the petitioner has suppressed the material facts regarding the composition of M/s.Mathew Enterprises, in whose name the impleading petitions, review petitions and revision petitions came to be filed.

8.The revision petitioner chose to file I.A.Nos.7726 of 2012 and 7727 of 2012 seeking impleadment as a party respondent in L.A.O.P.Nos.51 of 2011 and 50 of 2011 respectively, so as to enable the revision petitioner to challenge the compromise decree and seek readjudication of the claim based on the revision petitioner's claim. When the said petitions, filed after the disposal of the L.A.O.Ps by a compromise decree, were taken on file by the Court below, the second respondent herein filed two Civil Revision Petitions, C.R.P.Nos.4635 and 4636 of 2012 on the file of this Court invoking the power of superintendence of this Court under Article 227 of the Constitution of India, for striking off the proceedings in the above said impleading petitions I.A.Nos.7726 of 2012 in L.A.O.P.No.51 of 2011 and I.A.No.7727 of 2012 in L.A.O.P.No.50 of 2011.

9.When those Civil Revision Petitions came up before a learned Single Judge (Hon'ble Mr.Justice S.Nagamuthu) of this Court, the learned counsel for the petitioner in the present revisions, who was the first respondent in the said Civil Revision Petitions, represented that the said Interlocutory applications would be not pressed. At the same time, he sought a liberty of the Court to seek review of the compromise decree passed in the L.A.O.Ps. Accordingly, the revision petitions were disposed of by an order dated 19.03.2013 holding that in view of the offer made by the proposed party to withdraw the impleading petitions, no further adjudication was necessary. However, this Court made an observation that the question whether the revision petitioner herein was entitled to seek review of the decrees passed in the L.A.O.Ps was a matter to be adjudicated upon by the Land Acquisition Tribunal (Reference Court) and hence this Court would refrain from expressing any opinion as to whether the revision petitioner herein had got a right to file review petitions before the Land Acquisition Tribunal (Reference Court). However, in view of the entertainment of the impleading applications, this Court directed that the period spent on prosecuting the impleading applications from the date of their filing till the date of their withdrawal should be excluded (probably keeping in mind Section 14 of the Limitation Act) in computing the period of limitation, if any, for the filing of the review petitions. Pursuant to the said order, the impleading applications were withdrawn.

10.Besides filing such applications for impleadment, the revision petitioners had also filed review petitions on 16.05.2012. A preliminary objection was raised regarding the maintainability of the review petitions and the question regarding maintainability was taken up by the Court below for determination at the first instance. The learned VI Assistant Judge, City Civil Court (Reference Court), Chennai, after hearing, dismissed the review applications holding the same to be not maintainable. As against the dismissal of the review applications as not maintainable, the revision petitioner has brought forth the present revisions under Article 227 of the Constitution of India, invoking the power of superintendence of this Court.

11.M/s.Mathew Enterprises represented by K.Mathew, who was not a party to the Land Acquisition Proceedings either before the Land Acquisition Officer or before the Land Acquisition Tribunal, approached the Land Acquisition Tribunal with two interlocutory applications (I.A.Nos.7726 and

7727 of 2012 in L.A.O.P.Nos.50 and 51 of 2011 respectively) seeking an order to get impleaded as party respondent. Simultaneously on the very date (16.05.2012) on which the impleading petitions were filed, the said M/s. Mathew Enterprises filed two more applications in I.A.No.6356 of 2013 in L.A.O.P.No.50 of 2011 and I.A.No.6357 of 2013 in L.A.O.P.No.51 of 2011 on the file of the VI Assistant Judge, City Civil Court, Chennai (Land Acquisition Tribunal) for review of the compromise decrees passed on 26.04.2012 in the said L.A.O.Ps. The said applications for review were not numbered and they were kept in the unnumbered stage as the Court below (Land Acquisition Tribunal) entertained a doubt regarding their maintainability. As against the applications filed for impleadment, namely I.A.Nos.7726 of 2012 in L.A.O.P.No.51 of 2011 and I.A.No.7727 of 2012 in L.A.O.P.No.50 of 2011, the second respondent filed revisions in C.R.P.Nos.1636 of 2012 and 1635 of 2012 respectively for striking off the proceedings in the said impleading petitions invoking the power of superintendence of this Court under Article 227 of the Constitution of India. As this Court was inclined to accept the case of the petitioner in the said revision petitions, namely Poornachandran, that the impleading petitions after the disposal of the L.A.O.Ps by a compromise decree ought not to have been taken on file, the learned counsel for M/s.Mathew Enterprises chose to make a representation that the impleading petitions would be withdrawn without prejudice to their right to work out their remedy in the review applications. The said representation made this Court refrain from passing any order on merit in the previous Civil Revision Petitions, namely C.R.P.Nos. 1636 of 2012 and 1635 of 2012, and dispose of the revisions holding that no further adjudication was required in view of the representation made by Mathew Enterprises that it would not press I.A.Nos.7726 of 2012 and 7727 of 2012 seeking impleadment as a party respondent in the L.A.O.Ps. However, the attempt made on behalf of M/s.Mathew Enterprises to invite an observation that the review applications filed before the Land Acquisition Tribunal were maintainable and they were to be disposed of on merit did not succeed. Much against the expectation of M/s.Mathew Enterprises, this Court in its order dated 19.03.2013 made in C.R.P.Nos.4635 and 4636 of 2012, made a clear observation regarding the prayer seeking liberty to pursue the review petitions by stating that the question whether M/s.Mathew Enterprises was entitled to seek review of the compromise decree? was a matter to be adjudicated upon by the Land Acquisition Tribunal. However, the learned single Judge chose to make a further observation that if, for any reason the review petitions were entertained by the Tribunal, the time spent in prosecuting I.A.Nos.7726 of 2012 in L.A.O.P.No.51 of 2011 and I.A.No.7727 of 2012 in L.A.O.P.No.50 of 2011 before the Tribunal should be excluded while computing the period of limitation, if any, for such review petitions. The relevant portion of the order of this Court in the said Civil Revision Petitions is extracted hereunder:

> Since the learned senior counsel for the 1st respondent states that I.A.Nos.7726 and 7727 of 2012 shall not be pressed by the 1st respondent, no further adjudication is required in these revision petitions. So far as the liberty sought for by the 1st respondent is concerned, whether he is entitled to review or not is a matter to be adjudicated upon by the Land Acquisition Tribunal. I do not want to express any opinion as to whether the 1st respondent has got right to file review petitions before the Land Acquisition Tribunal. For any reason ,if the review petitions are entertained by the Tribunal, the time spent in I.A.Nos.7726 of 2012 in L.A.O.P.No.51 of 2011 and I.A.No.7727 of 2012 in L.A.O.P.No.50 of 2011 before the Tribunal shall be excluded while computing the period of limitation, if any, for such review petitions.

12.A reading of the above said observation made by this Court will make it clear that this Court did not express any opinion as to the maintainability of the review petitions filed by M/s.Mathew Enterprises for reviewing the decrees passed in L.A.O.P.Nos.50 and 51 of 2011. On the other hand, this Court made it clear that the question of maintainability of the review petitions was a matter to be adjudicated upon by the Land Acquisition Tribunal. However, by a misconception that the limitation for the review applications would be counted upto the date on which the review applications would be taken on file and numbered, a further observation came to be made to the effect that the time spent on the impleading applications in the L.A.O.Ps, before the Land Acquisition Tribunal, would stand excluded for the purpose of deciding the question of limitation for the entertainment of the applications for review. The said observation remains a superfluous one because the review applications I.A.Nos. 6356 and 6357 of 2013 came to be presented on 16.05.2012 itself, that is on the very same date on which the impleading petitions were filed.

13.The compromise decree in the L.A.O.Ps came to be passed on 26.04.2012. The limitation for filing review application is 30 days as per Article 124 of the Limitation Act. The review applications came to be filed within 30 days and hence, there shall be no question of the same being barred by limitation. The fact that the review applications were returned pointing out certain defects and re-presented subsequently rectifying the defects and were numbered on a subsequent day will not make the date of representation as the date of filing. The numbering of such review applications will relate back to the date of their original presentation in the Court. As such there was no need for incorporating a direction that the period spent on the impleading applications, namely I.A.Nos.7726 of 2012 in L.A.O.P.No.51 of 2011 and I.A.No.7727 of 2012 in L.A.O.P.No.50 of 2011 were to be excluded for the purpose of making a decision on the question of limitation regarding the filing of the review applications. The Land Acquisition Tribunal took trouble in deciding the question of limitation, which would have been otherwise unnecessary. Only because of the above said observation made by this Court in its order dated 19.03.2013 in C.R.P.Nos.4635 and 4636 of 2012, the Land Acquisition Tribunal discussed the question of limitation and held that the review applications were filed in time and they were not barred by limitation. The Land Acquisition Tribunal, after hearing the arguments advanced on both sides regarding the maintainability of the review applications, came to the conclusion that they were not maintainable and dismissed the review applications.

14.Mr.AR.L.Sundaresan, learned Senior Counsel appearing for the revision petitioner made the following submissions in his arguments:

> Since M/s.M.S.Enterprises was a partnership firm consisting of the third respondent E.Selvaraj and one Munirathina Naidu (father of the 1st respondent) and they (as partners of the above said firm) entered into an agreement with Nithyanandam and Poornachandran (1st and 2nd respondents) on 02.03.1991 and the third respondent E.Selvaraj representing the partnership firm M/s.M.S.Enterprises in-turn entered into an agreement with the revision petitioner, the same shall have the effect of assigning their right under the agreement dated 02.03.1991 in favour of the revision petitioner. In the absence of any specific clause in the agreement dated 02.03.1991, ie., the agreement entered into between M/s.M.S.Enterprises and the respondents 1

and 2 dated 02.03.1991, the assignment made in favour of the revision petitioners will be legally valid. The agreement dated 02.03.1991 does not contain any clause prohibiting assignment of the right of the purchaser under the said agreement in favour of any third party. On the other hand, it contains a specific clause permitting the assignment of the right of the purchaser under the agreement to a third party. The revision petitioner has got the right of the purchaser under the said agreement validly assigned to it and thus it has become a person interested in the land acquired by the Government. When such an assignment has taken place in favour of the revision petitioner, the land owners, namely the respondents 1, 2 and the third respondent, namely the purchaser under the agreement dated 02.03.1991 who has assigned his right under the said agreement in favour of the revision petitioner, colluded together to deny the right of the revision petitioner, entered into an agreement among themselves and obtained a compromise decrees for the apportionment of the compensation amount deposited to the credit of the L.A.O.Ps. The said compromise can even be termed a fraud played upon the revision petitioner. Instead of going into the merits of the contention of the petitioner regarding the legality of such compromise decree, the Court below chose to pass the impugned orders dismissing the applications filed by the revision petitioner for review of the judgment based on the compromise among the respondents 1 to 3 as not maintainable. The said orders suffer from a patent error and infirmity, which have got to be corrected by this Court in exercise of its power of superintendence under Article 227 of the Constitution of India.

15.In support of his contention that the review petitions filed by the revision petitioner before the Court below are maintainable and that the revision petitioner as assignee of a claimant in a reference under Section 30 of the Land Acquisition Act, is entitled to get impleaded and be heard in such reference, Mr.AR.L.Sundaresan, learned Senior Counsel appearing for the revision petitioner relied on the following judgments.

(1) In Mohammed Akil Khan Vs. Premraj Jawanmal Surana and another reported in AIR 1972 Bombay 217 (2) In Dr.G.H.Grant Vs. The State of Bihar reported in AIR 1966 SC 237 (3) In Sharda Devi Vs. State of Bihar reported in AIR 2003 SC 942 and (4)In Pappammal and others Vs. Balasubramanian and others reported in 2008 8 MLJ 962 .

16.In Mohammed Akil Khan Vs. Premraj Jawanmal Surana and another reported in AIR 1972 Bombay 217, a Division Bench of the Bombay High Court has made the following observations:

A contract for the sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties. It does not, of itself, create any interest in or charge on such property. When the seller and buyer are both willing to perform their respective parts of the contract but the specific performance of the contract has become impossible by the unexpected interference by the State in acquiring the property, the buyer will be entitled to recover from the seller any

> purchase money properly paid together with interest and also earnest with interest and to that extent he would have had under Section 55(6)(b) of T.P.Act a charge on the land. However, as the land is no more available to the parties as the State has acquired it and by deciding its compensation has converted the property into a sum certain, the buyer would be entitled to claim from the compensation amount, which represents the converted form of property, his purchase money and earnest together with interest. It is in this sense that the buyer whose contract is frustrated has a claim or share in the compensation which becomes payable to the owner of the property by reason of the acquisition thereof .

17.With the above said observation, the Division Bench of the Bombay High Court held that the buyer under the agreement would be undoubtedly a person interested as per the definition of Section 3(b) of the Land Acquisition Act, as he can claim amount advanced by him together with interest from the land and in the absence of the land from the money which represents the converted value of that land.

18.In Dr.G.H.Grant Vs. The State of Bihar reported in AIR 1966 SC 237, a Three Judges Bench of the Hon'ble Supreme Court by a majority of 2 : 1 made the following observations:-

> 3.There are two provisions. Ss 18(1) and 30, which invest the Collector with power to refer to the Court a dispute as to apportionment of compensation or as to the persons to whom it is payable. By Sub-s(1) of S.18 the Collector is enjoined to refer a dispute as to apportionment, or as to title to receive compensation, on the application within the time prescribed by sub-s.(2) of that Section of a person interested who has not accepted the award. Section 30 authorises the Collector to refer to the Court after compensation is settled under S.11, any dispute arising as to apportionment of the same or any part thereof or as to the persons to whom the same or any part thereof is payable. A person shown in that part of the award which relates to apportionment of compensation, who is present either personally or through a representative, or on whom a notice is served under sub-s(2) of S.12 must, if he does not accept the award, apply to the Collector within the time prescribed under S.18(2) to refer the matter to the Court. But a person who has not appeared in the acquisition proceeding before the Collector, may, if he is not served with notice of the filing, raise a dispute as to apportionment or as to the persons to whom it is payable, and apply to the Court for a reference under Section 30, for determination of his right to compensation which may have existed before the award, or which may have devolved upon him since the award. Whereas under Section 18 an application made to the Collector must be made within the period prescribed by Sub-Section (2) Clause (b), there is no such period prescribed under Section 30. Again under Section 18 the Collector is bound to make a reference on a petition filed by a person interested. The Collector is under Section 30 not enjoined to make a reference: he may relegate the person raising a dispute as to apportionment, or as to the person to whom compensation is payable, to agitate the dispute in a suit and pay the compensation in the manner declared by his award .

19.It was further observed by the Hon'ble Supreme Court in the said case as follows:

> 6.An award by the Collector is strictly speaking an offer made to the person interested in the land notified for acquisition; the latter may accept the offer, but is not bound to accept it. He may ask for a reference to the Court for adjudication of his claim for adequate compensation. The person interested may even accept the compensation under protest as to the sufficiency of the amount and ask for a reference. It is also open to the Government, even after the award is made, but before possession is taken, to withdraw from acquisition of any land in exercise of the powers conferred by Section 48 of the Land Acquisition Act. It is, therefore, not the award of the Collector which is the source of the right to compensation; the award quantifies the offer of the appropriate Government, which is made because the Government has taken over, or intends to take the land of the owner under the authority conferred by the Land Acquisition Act .

20.The further observation made by the majority, in the majority judgment of the said case is as follows:-

> 9.....The Collector is not authorised to decide finally the conflicting rights of the persons interested in the amount of compensation: he is primarily concerned with the acquisition of the land. In determining the amount of compensation which may be offered, he has, it is true, to apportion the amount of compensation between the persons known or believed to be interested in the land, of whom, or of whose claims, he has information, whether or not they have appeared before him. But the scheme of apportionment by the Collector does not finally determine the rights of the persons interested in the amount of compensation; the award is only conclusive between the Collector and the persons interested and not among the persons interested. The Collector has no power to finally adjudicate upon the title to compensation; that dispute has to be decided either in a reference under Section 18 or under Section 30 or in a separate suit. Payment of compensation, therefore, under Section 31 to the person declared by the award to be entitled thereto discharges the State of its liability to pay compensation (Subject to any modification by the Court), leaving it open to the claimant to compensation to agitate his right in a reference under Section 30 or by a separate suit .

21.In the said case, after the award was passed but before possession was taken under Section 16 of the Land Acquisition Act, a notification came to be made under the Bihar Land Reforms Act by which the title to the property notified for acquisition became vested in the State. Hence, the Hon'ble Supreme Court in the said case held that the right of the State of Bihar had undoubtedly arisen after the award was made and that once the title which had been originally vested in Dr.Grant stood statutorily transferred to the State, it was open to the State to claim a reference, not because the State was a person interested in the compensation money before the date of the award, but because of the right which has arisen since the award was made.

22.It is to be noted that after the award was passed by the Collector fixing the compensation, the notification under the Bihar Land Reforms Act came to be made and thereafter, the Government Pleader submitted a petition before the Collector claiming the compensation money awarded to Dr.Grant and praying for making a reference to the Court under Section 30 of the Land Acquisition Act. The reference was thus made by the Collector under Section 30 at the instance of the State Government which had become the owner of the property after the award was passed but before the acquisition proceedings got completed by taking possession, during which the phase of the proceedings the power of the government to drop the acquisition proceedings under Section 48 of the Act remained intact. The Hon'ble Supreme Court held that by operation of law and not because of the acquisition made under the Land Acquisition Act, the title of Dr.Grant was superseded and it got vested with the State Government and that therefore, the State Government was entitled to get the compensation for the property in preference to Dr.Grant.

23.In Sharda Devi Vs. State of Bihar reported in AIR 2003 SC 942, the Hon'ble Supreme Court made the following observations:-

> 0.The scheme of the Act reveals that the remedy of reference u/s 18 is intended to be available only to a 'person interested'. A person present either personally or through representative or on whom a notice is served u/s 12(2) is obliged, subject to his specifying the test as to locus, to apply to the Collector within the time prescribed u/s 18(2) to make a reference to the Court. The basis of title on which the reference would be sought for u/s 18 would obviously be a pre- existing title by reference to the date of the award. So is Section 29, which speaks of 'persons interested'. Finality to the award spoken of by Section 12(1) of the Act is between the Collector on one hand and the 'persons interested' on the other hand and attaches to the issues relating to (i) the true area, i.e. measurement of the land, (ii) the value of the land, i.e. the quantum of compensation, and (iii) apportionment of the compensation among the 'persons interested'. The 'persons interested' would be bound by the award without regard to the fact whether they have respectively appeared before the Collector or not. The finality to the award spoken of by Section 29 is as between the 'persons interested' inter se and is confined to the issue as to the correctness of the apportionment. Section 30 is not confined in its operation only to 'persons interested'. It would, therefore, be available for being invoked by the 'persons interested' if they were neither present nor represented in proceedings before the Collector, nor were served with notice u/s 12(2) of the Act or when they claim on the basis of a title coming into existence post award. The definition of 'person interested' speaks of 'an interest in compensation to be made'. An interest coming into existence post award gives rise to a claim in compensation which has already been determined. Such a person can also have recourse to Section 30. In any case, the dispute for which Section 30 can be invoked shall remain confined only (i) as to the apportionment of the amount of compensation or any part thereof, or (ii) as to the persons to whom the amount of compensation (already determined) or any part thereof is payable. The State claiming on the basis of a pre-existing right would not be a 'person interested', as already pointed out hereinabove and on account of its right being pre-existing, the

> State, in such a case, would not be entitled to invoke either Section 18 or Section 30 seeking determination of its alleged pre-existing right. A right accrued or devolved post award may be determined in a reference u/s 30 depending on Collector's discretion to show indulgence, without any bar as to limitation. Alternatively, such a right may be left open by the Collector to be adjudicated upon in any independent legal proceedings. This view is just, sound and logical as a title post award could not have been canvassed upto the date of the award and should also not be left without remedy by denying access to Section 30. Viewed from this angle, Section 18 and 30 would not overlap and would have fields to operate independent of each other .

24.Though the Hon'ble Supreme Court in Sharda Devi's case (AIR 2003 SC 942) expressed a view that there will not be any question of acquisition of the land belonging to the Government and hence, the Government could not figure as an interested person to claim a reference under Section 30 of the Land Acquisition Act, ultimately making reference to the judgment of the Full Bench of the Hon'ble Supreme Court in Dr.G.H.Grant's case, (AIR 1966 SC 237) and making a distinction between the title of the Government existing before the passing of the award and the title accruing to the Government subsequent to the passing of the award and independently of the acquisition proceedings, the Hon'ble Supreme Court held that only in the latter case, the Government could claim to be a person interested and stake a claim to the amount of compensation determined by the Collector. According to the said judgment, such a claim could be made, if such acquisition of title otherwise than through the land acquisition proceedings occurs before the completion of the acquisition proceedings by taking possession under Section 16 of the Land Acquisition Act, which would result in vesting of the property in the State absolutely free from encumbrances. The relevant portion is found in paragraph 41 of the said judgment is extracted hereunder:

> 1.However, we would like to clarify our decision by sounding two notes of caution. Firstly, the quashing of the proceedings under Section 30 of the Land Acquisition Act would not debar the State from pursuing such other legal remedy before such other forum as may be available to the State Government and on the merits and the maintainability thereof we express no opinion herein. Secondly, the situation in law would have been entirely different if the title of the appellant would have come to an end by any event happening or change taking place after the making of the award by the Collector as was the case in Dr. G.H. Grant Vs. State of Bihar (1965) 3 SCR 576. The title of Dr. Ghosh had come to an end by change of law referable to a date subsequent to the making of the award. In this context it was held "there is no reason why the right to claim a reference of a dispute about the person entitled to compensation may not be exercised by the person on whom the title has devolved since the date of the award" and "there is nothing in Section 30 which excludes a reference to the Court of a dispute raised by a person on whom the title of the owner of land has, since the award, devolved".

25.Following the views of the Hon'ble Supreme Court in Sharda Devi's case, a Division of this Court in Pappammal and others Vs.Balasubramanian and others reported in (2008) 8 MLJ 962, upheld the order of a learned single Judge passed in a Writ Petition filed by a person claiming to be

interested in the property acquired, seeking a direction to the Collector to make a reference under Section 30 of the Land Acquisition Act.

26.Per contra, Mr.M.N.Krishnamani, learned Senior Counsel appearing for the first respondent in C.R.P.No.3579 of 2013 and Mr.R.Thiagarajan, learned Senior Counsel appearing for the first respondent in C.R.P.No.3557 of 2013 pointed out the fact that all the judgments cited by the learned Senior Counsel for the revision petitioner in support of his contentions were decisions rendered in cases wherein either the request for making such a reference was made before the award came to be passed or in case where such a request was made based on subsequent acquisition/conferment of title on the persons seeking a reference for apportionment or for deciding the person/persons entitled to get the compensation. The learned Senior Counsel have also pointed out the fact that in none of the cases cited by the learned Senior Counsel for the revision petitioner a person who did not make a claim before the Collector was allowed to get impleaded in a L.A.O.P on a reference made under Section 30 of the Land Acquisition Act and that on the other hand in all such cases, persons who claim either derivation of title subsequent to the passing of the award and before the acquisition proceedings were completed and persons who were not given notice and hence did not appear before the Collector during the award enquiry were allowed to make applications before the Collector for making a reference under Section 30 of the Land Acquisition Act regarding the question of apportionment or regarding the person/persons entitled to get the compensation. Learned Senior Counsel for the contesting respondents also pointed out the fact that in almost all the cases cited by the learned Senior Counsel for the revision petitioner, it was decided that the persons who did not appear for the award enquiry either because the title came to be conferred on them subsequent to the passing of the award or because they were not given notice of the acquisition proceedings of the award enquiry were allowed to move the Collector for making a reference under Section 30 of the Land Acquisition Act or to make their claim by instituting a suit in the Civil Court.

27.As rightly pointed out by the learned Senior Counsel for the respondents, in none of the cases cited by the learned Senior Counsel for the revision petitioner, the persons claiming derivation of title before passing of the award or the persons who derived title independent of the title claimed by one of the persons who was a party to the reference under Section 30 of the Land Acquisition Act was allowed to get impleaded in the L.A.O.P on such reference.

28.However, Mr.A.R.L.Sundaresan, learned Senior Counsel for the revision petitioner, drawing the attention of the Court to Section 53 of the Land Acquisition Act, contends that the said Section makes Order 22 Rule 10 C.P.C specifically applicable to the proceeding before the Reference Court and that in accordance with Section 146 of the Code of Civil Procedure any person claiming under a claimant in a reference made either under Section 18 or under Section 30 of the Land Acquisition Act shall be entitled to be substituted as a claimant under the said provisions of the Code of Civil Procedure. It is his further contention that the reference itself having been made at the instance of the third respondent E.Selvaraj, the revision petitioner, having derived the right under an agreement entered into with him, should be construed to be a person covered by Section 146 of C.P.C and Order 22 Rule 10 of C.P.C and that therefore, the review petitions filed by the revision petitioner challenging the judgment pronounced on the basis of a compromise between the respondents 1 and 2 and the third respondent should have been held maintainable, as, according to

him, the compromise itself was entered into for the purpose of defeating the rights of the revision petitioner.

29.It is the further contention of Mr.AR.L.Sundaresan, learned Senior Counsel for the revision petitioner that fraud will vitiate the entire proceedings and hence a review petition filed by the revision petitioner ought not to have been rejected as not maintainable. It is also his contention that even under the compromise decree, the right of the revision petitioner to have a share in the compensation amount has been recognised by providing a clause to the effect that the third respondent, who was given Rs.1 Crore in full quit of his claim, has agreed to settle the claim of the revision petitioner. According to the submissions made by the learned Senior Counsel for the petitioner, the said admission itself will make it clear that the compromise is beyond the scope of the power of the Court dealing in L.A.O.P cases and that therefore, in order to protect the interest of justice, the order of the Court below dismissing the review petitions as not maintainable should be set aside and the petitioner should be permitted to invite an order on merit in the review petitions.

30.As an answer to the above said submissions made by the learned Senior Counsel for the revision petitioner, Mr.M.N.Krishnamani and Mr.R.Thiagarajan, learned Senior Counsel for the contesting respondents made the following submissions:

> Apart from the fact that the petitioner is not a person who claims to have derived title or interest in the property acquired subsequent to the passing of the award, the very agreement between the revision petitioner and the third respondent is illegal and cannot be enforced. When a challenge to the acquisition of a larger extent of property for a different public purpose was made and the matter went up to the Hon'ble Supreme Court, the Hon'ble Supreme Court upheld the acquisition in respect of the entire extent, but showing indulgence to accommodate the family members of the land owners, who were 18 in number for having a compact residential block for their personal use directed release of 1.50 acres alone which is the subject matter of the present L.A.O.Ps with a specific undertaking of the land owners that the same would not be used for any other purpose and it would be used for putting up a compact residential block for their personal use. When such an undertaking was given before the Hon'ble Supreme Court and the direction to release the land measuring 1.50 acres was issued by the Hon'ble Supreme Court for their personal use as residential block, such land cannot be validly agreed to be sold to any third party and any such agreement shall be a contempt of Court as it will be in violation of the specific undertaking given to the Hon'ble Supreme Court. Apart from that, there is no direct agreement for the sale of the property measuring 1.50 acres concerned in the present L.A.O.Ps/the present Civil Revision Petitions. On the other hand, the agreement was for the sale of 18.50 acres out of the total extent of 20.60 acres which was acquired in a previous land acquisition proceedings, which acquisition came to be confirmed by the Apex Court and in the said agreement, only as a secondary and supplementary clause has been provided to the effect that in case, the parties were not able to get the properties (main subject matter of the agreement) released from acquisition proceedings, the land exempted and released pursuant to the direction of the

> Supreme Court based on the specific undertaking that the same would not be used for any other purpose other than the one for putting up a compact residential block for the personal use of the members of the families of the land owners should be conveyed to the revision petitioner. A close scrutiny of the terms of the agreement based, on which the revision petitioner makes a claim, will make it clear that the agreement itself is one against public policy, besides the latter part of the agreement being invalid and illegal as the same would amount to contempt of court.

31.This Court paid its anxious consideration to the above said submissions.

32.At the cost of repetition, the facts leading to the filing of the present revision are highlighted here. A total extent of 20.60 acres of land comprised in various survey numbers in Koyambedu village including the 1.50 acres concerned in the present revisions was acquired by the Tamil Nadu Government for its Urban Development scheme of K.K.Nagar, Chennai formulated by the Tamil Nadu Housing Board. The acquisition proceedings were started in 1975. After passing of the award, the notification under Section 4(1) of the Land Acquisition Act was challenged in a writ petition before this Court in W.P.No.6169 of 1983. When the said writ petition was pending, a memorandum of understanding came to be entered into between M.Nithyanandam and Poornachandran (respondents 1 and 2 in the revision) on the one hand and their father Munirathinam Naidu and E.Selvaraj (the third respondent in the revision) as partners of M/s.M.S.Enterprises on the other hand, for the sale of 18.50 acres out of the total extent of the land sought to be acquired for a sale consideration at the rate of Rs.17 lakhs per acre. Though it was entered into for the sale of 18.50 acres even out of the said extent, (respondents 1 and 2) Nithyanandam and Poornachandran were given a right to reserve two acres for themselves. Subsequent to the signing of the memorandum of understanding, dated 02.03.1991, the Division Bench of this Court allowed the above said writ petition by an order dated 22.04.1991 on the ground of vagueness in the notification published under Section 4(1) of the Land Acquisition Act. As against the said order of Division Bench of this Court, an appeal on Special Leave came to be filed by the State of Tamil Nadu before the Hon'ble Supreme Court in Civil Appeal No.1867 of 1992. Ultimately, the Hon'ble Supreme Court, by an order dated 17.01.1996, set aside the order of the Division Bench of this Court and upheld the acquisition of 20.60 acres, with a direction to the State Government to release an extent of 1.50 acres of land in the north eastern corner of the land comprised in Old Survey No.167/1B abutting Poonamalli High Road, which has been re-numbered as Survey No.2/2 and 2/3. Meanwhile, even before the disposal of the said appeal by the Hon'ble Supreme Court, the respondents 1 and 2, chose to cancel the memorandum of understanding dated 02.03.1991. It is pertinent to note that the said memorandum of understanding was entered into by Munirathinam Naidu and the third respondent E.Selvaraj not in their individual capacities, but as partners of M/s.M.S.Enterprises. When the said memorandum was cancelled on 02.11.1991 itself, the third respondent E.Selvaraj chose to file a suit O.S.No.7704 of 1991 in the name of the above said partnership firm M/s.M.S.Enterprises represented by himself, for a declaration that notice issued cancelling the memorandum of understanding dated 02.11.1991 was invalid and unenforceable in law and also for an injunction. Meanwhile, the third respondent, representing M/s.M.S.Enterprises entered into another memorandum of understanding with M/s.Southern Housing Corporation Limited on 09.05.1992, nominating the said concern as the purchaser to purchase the properties concerned in the memorandum of understanding dated

02.03.1991. Based on the memorandum of understanding with M/s.Southern Housing Corporation Limited, the third respondent representing M/s.M.S.Enterprises filed another suit in O.S.No.6485 of 1992 for a declaration that the memorandum of understanding between M/s.M.S.Enterprises and M/s.Southern Housing Corporation Limited was binding on the respondents 1 and 2 namely, Nithyanandam and Poornachandran and also for other reliefs.

33.All those things happened during the pendency of the writ petition appeal before the High Court and the appeal before the Hon'ble Supreme Court. The suits filed by the E.Selvaraj, representing M/s.M.S.Enterprises were challenged by the respondents 1 and 2 by filing applications under Order 7 Rule 11 C.P.C praying for the rejection of the plaints on the ground that a suit in the name of an unregistered partnership firm was not maintainable, since admittedly M/s.M.S.Enterprises was not a registered firm. The said applications were allowed and the plaint in both the suits were rejected. The same was not further challenged. It also transpires that the memorandum of understanding between E.Selvaraj and M/s.Southern Housing Corporation Ltd., was given a go-bye by the parties to the said memorandum. After the rejection of those plaints, the agreement relied on by the revision petitioner came to be entered into between the third respondent E.Selvaraj and the revision petitioner on 12.06.2009. If the contents of the agreement are taken into consideration, the contention of the learned Senior Counsel for the contesting respondents cannot be brushed aside as untenable or having no basis. There are a number of clauses that show that the agreement itself was entered into by the third respondent with the revision petitioner, as one against public policy and also as an act of contempt violating the order of the Hon'ble Supreme Court. The agreement itself contains aspects which would show that it was not only against the public policy but also the same was brought into existence for making a fraudulent claim. First of all, the third respondent E.Selvaraj could not have relied on the memorandum of understanding dated 02.03.1991 after having suffered orders of rejection of the plaints filed by him in the name of M/s.M.S.Enterprises. The agreement dated 12.06.2009 under which the revision petitioner makes a claim was executed by E.Selvaraj not as the owner of the land, but as a purchaser under the agreement for sale, namely memorandum of understanding agreement dated 02.03.1991. The said memorandum of agreement was cancelled long back on 02.11.1991 itself. A challenge made to the cancellation of the agreement by filing a suit resulted in the rejection of the plaint by an order dated 27.12.2004. Thereafter, nothing was done by E.Selvaraj till 12.06.2009 namely for about 5 years. The same will show that the right to challenge the cancellation and to exercise the alleged right acquired under the memorandum of agreement dated 02.03.1991 stood barred by limitation. Only as a gambling and with a view to trouble the water and fish out of it, the agreement dated 12.06.2009 came to be entered into between E.Selvaraj and the revision petitioner.

34.As pointed out supra, the third respondent E.Selvaraj claimed right on the basis of the memorandum of agreement dated 02.03.1991. The said memorandum was not entered into by the third respondent E.Selvaraj as an individual, but it was entered into by himself and Munirathinam Naidu (who was none other than the father of the respondents 1 and 2) as partners of the unregistered firm M/s.M.S.Enterprises. Though the third respondent E.Selvaraj would have claimed that subsequent to the memorandum of agreement dated 02.03.1991 Munirathinam Naidu released his right as a partner and he became the sole surviving partner and the concern became proprietary concern, there is not even a scrap of paper to support his contention and substantiate it. No claim

under the agreement dated 12.06.2009 can be entertained as the agreement itself as illegal and opposed to public policy. As rightly pointed out by the learned Senior Counsel for the contesting respondents, a clause shocking the conscience of the Court came to be incorporated in the agreement to the effect that out of the sale consideration Rs.4 Crores should be set apart for being paid to the Registrar of the High Court for closing all the cases relating to the property. In addition to the inclusion of such a clause, it has been specifically recited therein that the agreement should be kept secret till the accomplishment of the complete transaction intended to be made under the agreement. The same as rightly contended by the learned Senior Counsel for the contesting respondents would show that the parties to the agreement had gone to the extent of incorporating a clause for bribing the Registrar of the High Court to influence the closure of all the cases relating to the property.

35.In this regard, an attempt was made by the learned Senior Counsel for the revision petitioner to contend that the same was not intended to be a bribe/illegal gratification and on the other hand, it was intended to be kept in the custody of the Registrar of the High Court to be utilised in settlement of the dispute between the parties by using the good office of the Registrar for effecting a settlement between the parties. The said contention is far-fetched and the same cannot be accepted as the true intent of the parties. The contention that the Registrar could not bring about a termination of the proceedings will not in any way help the revision petitioner to project the clause to be an innocent one, without any intention to commit any offence or making such clause against public policy, especially in the light of the clause that the said agreement shall be kept secret. As rightly contended by the learned Senior Counsel for the contesting respondents, the agreement is illegal on that ground also as one against public policy.

36.De hors the validity or otherwise of the agreement dated 12.06.2009, based on which the claim has been made by the revision petitioner, it is the contention of the learned Senior Counsel for the contesting respondents that the revision petitioner, being a person making a claim based on an agreement dated 12.06.2009 which was prior to the passing of the award, ought to have appeared before the Collector making a claim and he cannot be construed to be an assignee pending the proceedings to seek the benefit of Order 22 Rule 10 and Section 146 of the Code of Civil Procedure. It is their further contention that the revision petitioner did not get any assignment under the agreement dated 12.06.2009 and what was done by the third respondent E.Selvaraj was only a nomination of the revision petitioner as the purchaser. It is not in dispute that the revision petitioner's claim is based on any assignment made by the third respondent E.Selvaraj during the pendency of the L.A.O.Ps in which event alone he can seek to get impleaded in accordance with Order 22 Rule 10 and Section 146 of the Code of Civil Procedure. Admittedly, the agreement dated 12.06.2009 came to be made prior to the conclusion of the land acquisition proceedings and prior to the institution of L.A.O.Ps on a reference made under Section 30 of the Land Acquisition Act. When such a claim of derivation of title prior to the date of making reference is sought to be made, such persons cannot seek to get impleaded in the L.A.O.Ps, though they may be in a position to approach the Collector for making a reference on their claim or to file a suit for the recovery of the amount from the persons who were paid the same.

37.In support of their contentions, learned Senior Counsel for the contesting respondents relied on the following judgments:

1) In Ajjam Linganna and others Vs. Land Acquisition Officer, Revenue Divisional Officer, Nizamabad and others reported in (2002) 9 SCC 426

2) In Prayag Upnivesh Awas Exvam Nirman Sahkarai Samiti Ltd., Vs. Allahabad Vikas Pradhikaran and another reported in (2003) 5 SCC 561

3)In Shyamali Das Vs. Illa Chowdhry and others reported in (2006) 12 SCC 300

4) In Ram Prakash Agarwal and another Vs.Gopi Krishnan and others reported in 2013-3-L.W.280 = (2013) 11 SCC 296 and

5) In Ramrameshwari Devi and others Vs.Nirmala Devi and others reported in (2011) 8 SCC 249

38.In Prayag Upnivesh Awas Exvam Nirman Sahkarai Samiti Ltd.,'s case (2003) 5 SCC 561) cited supra, the Hon'ble Supreme Court held as follows:

It is well established that the reference court gets jurisdiction only if the matter is referred to it under Section 18 or 30 of the Act by the Land Acquisition Officer and that civil court has got the jurisdiction and authority only to decide the objections referred to it. The reference court cannot widen the scope of its jurisdiction or decide matters which are not referred to it. This question was considered by various judicial authorities and one of the earliest decisions reported on this point is Pramatha Nath Mullick Bahadur vs. Secy of State AIR 1930 PC 64. This was a case where the claimant sought a Reference under Section 18 of the Act. In the application filed by the claimant, he raised objection only regarding the valuation of the land. The claimant did not dispute the measurements of the land given in the award. Before the reference court, the claimant raised objection regarding the measurements of the land and sought for fresh measurements. This was refused and the claimant applied to the High Court for revision of this order, but without success. Again, in the appeal, the claimant raised the same objection regarding measurements and the High Court rejected it. The Judicial Committee of the Privy Council held thus :

"Their Lordships have no doubt that the jurisdiction of the Courts under this Act is a special one and is strictly limited by the terms of these sections. It only arises when a specific objection has been taken to the Collector's award, and it is confined to a consideration of that objection. Once therefore it is ascertained that the only objection taken is to the amount of compensation, that alone is the "matter" referred, and the Court has no power to determine or consider anything beyond it."

39.The Hon'ble Judges of the Supreme Court also referred to another judgment of the Supreme Court in K.Kanakarathamma Vs. State of A.P, reported in AIR 1965 SC 304 wherein the Land Acquisition Officer made a reference under Section 30 for the apportionment of the compensation amount amongst various claimants. The Hon'ble Supreme Court rejected a contention similar to the one raised by the revision petitioner herein and made the following observation:-

> 9.The matter goes to the court only upon a reference made by the Collector. It is only after such a reference is made that the court is empowered to determine the objections made by a claimant to the award. Section 21 restricts the scope of the proceedings before the court to consideration of the contentions of the persons affected by the objection. These provisions thus leave no doubt that the jurisdiction of the court arises solely on the basis of a reference made to it. No doubt, the Land Acquisition Officer has made a reference under s. 30 of the Land Acquisition Act but that reference was only in regard to the apportionment of the compensation amongst the various claimants. Such a reference would certainly not invest the court with the jurisdiction to consider a matter not directly connected with it. This is really not a mere technicality for as pointed out by the Privy Council in Nusserwanjee Pestonjee & Ors. V. Meer Mynoodeen Khan Wullud Meer Sudroodeen Khan Bahadoor wherever jurisdiction is given by a statute and such jurisdiction is only given upon certain specified terms contained therein it is a universal principle that those terms should be complied with, in order to create and raise the jurisdiction, and if they are not complied with, the jurisdiction does not arise. This was, therefore, a case of lack of inherent jurisdiction and the failure of the State to object to the proceedings before the court on the ground of an absence of reference in so far as the determination of compensation was concerned cannot amount to waiver or acquiescence. Indeed, when there is an absence of inherent jurisdiction, the defect cannot be waived nor can be cured by acquiescence."

40.The said judgment of the Hon'ble Supreme Court came to be cited by the learned Senior Counsel for the contesting respondents only to show that the Reference Court gets jurisdiction by virtue of reference and the scope of the jurisdiction, the Reference Court gets on such reference is limited to the reference and it cannot widen the same.

41.In Ajjam Linganna's case (2002) 9 SCC 426) cited supra, one person filed an application before the Land Acquisition Officer seeking for a reference under Section 18. Subsequently a reference was made at the instance of other persons under Sections 30 and 31 of the Land Acquisition Act. A person who applied for a reference under Section 18 wanted to amend the reference made at his instance under Section 18 to be amended as a reference under Sections 30 and 31. The said amendment petition was allowed and the Hon'ble Supreme Court held that the order allowing amendment was not proper and made the following observation:

> .In our view, it was not open to the appellants (other than Ajjam Linganna) to have applied directly to the reference Court for impleadment and to seek enhancement under Section 18 for compensation. The only person for whom some consideration

> can be shown is Ajjam Linganna who had atleast filed an application on 14-9-93 before Land Acquisition Officer seeking reference.
>
> 5. In the above facts and circumstances, these appeals preferred by the various appellants except Ajjam Linganna are liable to be set aside inasmuch as it was not open to reference Court to implead the said appellants in the reference Court without their having approached the Land Acquisition Officer seeking reference earlier.

42.In Shyamali Das's case (2006) 12 SCC 300) cited supra, the appellant therein, claiming title to the acquired land at the first instance preferred a petition for impleadment in the land acquisition proceedings initiated at the instance of other persons. Having unsuccessfully prosecuted such an application for impleadment, she again filed an application for impleadment on the ground that under the changed situation she was entitled to get impleaded under Order 1 Rule 10 C.P.C. The Hon'ble Supreme Court held that since the Reference Court had dismissed the earlier petition for impleadment holding that she was not the person interested as per the meaning of Section 3 (b) of the Land Acquisition Act, the subsequent application for impleadment could not lie. The Hon'ble Supreme made the following observation therein:

> 9.The Act is a complete code by itself. It provides for remedies not only to those whose lands have been acquired but also those who claim the awarded amount or any apportionment thereof. A Land Acquisition Judge derives its jurisdiction from the order of reference. It is bound thereby. Its jurisdiction is to determine adequacy or otherwise of the amount of compensation paid under the award made by the Collector. It is not within its domain to entertain any application of pro intersse suo or in the nature thereof .

43.In Ram Prakash Agarwal's case (2011) 8 SCC 249 cited supra, the Hon'ble Supreme Court held that an impleading petition by a third party to a reference, shall not be maintainable. Following are the observations made therein:

> 0.In view of the above, the legal issues involved herein, can be summarised as under:-
>
> (i) An application under Order IX Rule 13 CPC cannot be filed by a person who was not initially a party to the proceedings; (ii) Inherent powers under Section 151 CPC can be exercised by the Court to redress only such a grievance, for which no remedy is provided for under the CPC;
>
> (iii) In the event that an order has been obtained from the Court by playing fraud upon it, it is always open to the Court to recall the said order on the application of the person aggrieved, and such power can also be exercised by the appellate court;
>
> (iv) Where the fraud has been committed upon a party, the court cannot investigate such a factual issue, and in such an eventuality, a party has the right to get the said

judgment or order set aside, by filing an independent suit.

(v) A person aggrieved may maintain an application before the Land Acquisition Collector for reference under Section 18 or 30 of the Act, 1894, but cannot make an application for impleadment or apportionment before the Reference Court .

44.The present revisions came to be filed against the order passed by the Reference Court dismissing the review applications filed by the revision petitioner as not maintainable. In the judgment of the Division Bench of the Delhi High Court in Bharat Singh Vs.Firm Sheo Pershad Giani Ram reported in AIR 1978 DELHI 122, their Lordships of the Delhi High Court expressed a categorical view that the review application can be filed only by a party to the lis in which the order sought to be reviewed has been passed and it cannot be preferred by a third party; That it could not be contended that the phrase any person considering himself aggrieved would include any one who is adversely affected by the impugned order, whether that person is or is not a party to the lis in which the impugned order has been passed. It was held that from a reading of the rule, any person considering himself aggrieved by a decree or order may apply for review provided he can establish that he from the discovery of new and important matters or evidence which, after the exercise of due diligence, was not within his knowledge or could not produce by them at the time when the decision was passed or order was made. This postulates that the person applying for review has to satisfy two conditions, namely, that he is aggrieved by the order and also that he for the reasons mentioned was not in a position to bring that fact to the notice of the Court earlier which resulted in a wrong order being passed. If these two conditions are necessary before a review application can be moved, it follows that the review application has to be made by a person who was a party to the lis decided by the impugned order or decree. This view is based on the principle that a decree or order adversely affecting a person, therefore, can ignore the order or decree which adversely affects him and so, cannot apply for a review of that order or decree. He may take such other steps as may be available to him in law to protect his right as and when the order or decree adversely affecting him is sought to be enforced so as to jeoparadise his rights were the further observation made therein.

45.A Division Bench of this Court in Woodlands Hotel Vs. State of Tamil Nadu reported in (2008) 5 MLJ 928, after referring to various decisions, held that a third party to the proceedings cannot come under the true meaning of 'aggrieved person' so that he/she can apply for review of the order/decree.

46.From the above precedents, it shall be quite obvious that the revision petitioner, being a third party to the proceedings namely, the reference made by the Collector to the Reference Court, cannot have the right to file a petition for review of the judgment of the Reference Court and that the learned Judge of the Reference Court has not committed any error in dismissing the applications filed by the revision petitioner seeking review of the judgment dated 03.09.2013 based on the compromise between first respondent and third respondent. Above all, the claim of the revision petitioner is not that subsequent to the passing of the award, he got subrogated and stepped into the shoes of the third respondent to maintain his claim for a share in the compensation amount. On the other hand, it is the claim of the revision petitioner that it got the right under the agreement dated 12.06.2009 which was long prior to the acquisition proceedings. The revision petitioner could have

very well appeared before the Land Acquisition Officer and claimed a share in the compensation amount and if opposed could have prayed for a reference being made under Section 30 of the Land Acquisition Act. As the revision petitioner did not do so, it cannot try to get impleaded and cannot get the order reviewed on the premise that it had got a right under the agreement dated 12.06.2009 which came into existence much prior to the institution of the land acquisition proceedings and passing of the award. The Judgment of the Hon'ble Supreme Court in Ajjam Linganna's case is the authority on this point.

47.There are other peculiar circumstances which will be enough to negative the claim of the revision petitioner. The revision petitioner claims to have derived title under the agreement entered into with the third respondent E.Selvaraj dated 12.06.2009. The third respondent E.Selvaraj had claimed that he had got an interest in the land and hence in the compensation amount, by virtue of the memorandum of understanding dated 02.03.1991. The said agreement itself has been cancelled on 02.11.1991. The challenge made by E.Selvaraj by filing suit in O.S.No.7704 of 1991 ended in failure as the plaint in the suit was rejected. Again he entered into an agreement with one M/s.Southern Housing Corporation Ltd., and filed another suit in O.S.No.6485 of 1992 praying for a declaration that the agreement between himself and M/s.Southern Housing Corporation Ltd., was binding on the respondents 1 and 2 and also for injunction. The plaint in the said suit was also rejected under Order 7 Rule 11 C.P.C. After having suffered the rejection of the plaint in the said suit, the third respondent effected a cunning device by entering into an agreement with the revision petitioner on 12.06.2009. It is also pertinent to note that E.Selvaraj filed yet another suit O.S.No.4648 of 2004 seeking a declaration that the agreement between Poornachandran and one M/s.Savitha Estates and Builders (P) Ltd., was void, illegal and not binding upon him. The plaint in the said suit was also rejected by an order dated 19.08.2011. It has been pointed out supra that the agreement dated 12.06.2009 itself is against public policy, illegal and it is in violation of the order of the Hon'ble Supreme Court and hence, would amount to contempt of Court.

48.Under the said circumstances, the revision petitioner filed a suit in O.S.No.2928 of 2012 before the City Civil Court, Chennai. After having failed to obtain an interim order, he chose to file two applications in I.A.Nos.7726 and 7727 of 2012 for getting impleaded in those L.A.O.Ps which had already been disposed of. The respondents 1 and 2 challenged the maintainability of such applications by preferring revisions in C.R.P (PD)Nos.4635 and 4636 of 2012 under Article 227 of the Constitution of India. A learned single Judge of this Court (The Hon'ble Mr.Justice S.NAGAMUTHU) closed the Civil Revision Petitions by order dated 19.03.2013 after recording the undertaking of the revision petitioner that it was going to withdraw the impleading petitions.

49.As rightly pointed out by the learned Senior Counsel for the contesting respondents, such a move was made by the revision petitioner after the Court expressed its view in the negative regarding the maintainability of the impleading petitions. However, the learned single Judge made an observation that the revision petitioner shall be at liberty to pursue the review applications. A note of caution was exercised by the learned single Judge in making it clear that the question of maintainability of the review petitions shall be an issue to be decided by the Reference Court. Accordingly, the Reference Court took the question of maintainability of the review petitions and passed the impugned orders holding that the review applications were not maintainable.

50.Apart from the question of maintainability, the act of the revision petitioner in filing the review applications can be viewed as a fraud on the Court and also fraud on the respondents 1 and 2. As pointed out supra, the agreement relied on by the revision petitioner itself contains a clause that a sum of Rs.4 Crores should be set apart to be paid to the Registrar of the High Court for closing the cases relating to the property. The mala fide intention of the petitioner will be seen from the fact that the agreement contains a clause that the agreement be kept secret. The agreement contains a clause that it was agreed between the parties that Nithyanantham will receive Rs.5 Crores, Poornachandran will receive Rs.5 Crores and E.Selvaraj should receive Rs.5 Crores. The clause 3 of the agreement dated 12.06.2009, is to the effect that Rs.5 Crorers should be paid to Nithyanantham and Rs.5 Crores should be paid to Poornachandran. However, two demand drafts were purchased in favour of Nithyanantham alone in order to show that the revision petitioner parted with a sum of Rs.10 Crores as consideration under the agreement. In order to substantiate the same, the revision petitioner seems to have produced xerox copies of two demand drafts in the suit filed by it. The demand drafts on their face would appear to have been purchased for a sum of Rs.5 crores each. But if the punching made on the demand drafts are taken into consideration, it will be very much obvious that the demand draft was purchased for a sum below Rs.10,000/- alone and it was altered after making chemical eraser of the writings on it. There is no proof that E.Selvaraj was paid Rs.5 Crores. However, an attempt was made to show that Nithyanandam was paid Rs.10 Crores and xerox copies of two demand drafts each for a sum of Rs.5 Crores in favour of M.Nithyanandam bearing D.D.Nos.586399 and 586400 drawn on Syndicate Bank which are available in the typed set of papers. A communication received from the Head Office of Syndicate Bank, dated 03.07.1999 throws light on the procedure of issuing demand drafts after punching the vertical and horizontal column. Any demand draft for Rs.1 lakh and above shall bear the signatures of two authorised officials, whose signatures are already circulated to the branches. The requirement of punching of correct boxes is intended to prevent manipulation and forgery. The demand draft contains at the top of it 5 horizontal boxes. The first one from left to right will represent the demand draft amount to be less than Rs.10,000/-; the second one will represent demand draft for Rs.10,000/- and above but below Rs.1 lakh; the third one represents Rs.1 lakh and above but below Rs.10 lakhs; the 4th one represents Rs.10 lakhs and above but below Rs.1 Crore and the 5th one represents Rs.1 Crore and above. Similarly on the right hand side of the demand draft, there is a vertical line containing 9 boxes with numericals 1 to 9 from bottom to top. The box punched will represent the first digit of the amount for which the Demand Draft is issued.

51.It is curious to note that the petitioner, who chose to make chemical eraser and manipulate the demand drafts, was not aware of the punching. The first box of the horizontal column has been punched. Similarly, the first box in the vertical column with numericals has been punched. However, a correction was made by rounding the 5th box in the vertical column to make it appear that the demand draft was taken for a sum of Rs.5 Crores. Though an attempt was made to manipulate things, because of the ignorance of banking practice the revision petitioner has committed a blunder and the same has betrayed him. It is an admitted fact that no amount was realised by the respondents 1 and 2. Under such circumstances alone, this Court has come to a conclusion that the fraud sought to be committed by the revision petitioner is manifold and the same is manifest in many ways. Furthermore, when the amount claimed to have been paid under the said demand drafts were not realised by the respondents 1 and 2, the petitioner cannot claim

refund of that amount.

52.When a property sought to be sold under an agreement was subsequently lost by the acquisition of the same by the Government, the purchaser under the agreement shall be entitled to a charge over the property and since under Section 55 (6) (b) of T.P. Act and since the property lost and converted into the compensation shall be subject to the charge as held in Mohammed Akil Khan's case (AIR 1972 Bombay 217) cited supra. It was also made clear in the said judgment that the purchaser under the agreement shall be entitled to the refund of the advance amount with interest from that part of the compensation excluding solatium. In this case, there is no tangible evidence as to how which was paid by the petitioner on the third respondent or to the respondents 1 and 2. Under such circumstances, the first respondent has effected a compromise with the third respondent for giving Rs.1 Crore alone to the third respondent leaving the remaining amount to be taken by the first respondent. When such a compromise was entered into, without even proving that the petitioner paid more than Rs.1 Crore and hence there was a fraud played upon him, the revision petitioner has chosen to all sorts of dilatory tactics by filing the suit, filing applications for impleadment in the L.A.O.Ps which have been disposed of and filing review applications. The said act on the part of the revision petitioner shall, no doubt be a glaring example of abuse of process of Court and this Court should not allow the revision petitioner to cause abuse of process of Court by entertaining the revision against the dismissal of the review applications as not maintainable.

53.In view of the reasons stated above, this Court comes to the conclusion that there is no defect or infirmity in the order of the learned VI Assistant Judge, City Civil Court, Chennai and the same does not warrant any interference by this Court in exercise of its power of revision. There is no merit in the revisions and the same deserves dismissal.

54.M.P.No.2 of 2013 has been filed by M/s.Southern Housing Corporation Ltd., for getting impleaded as a respondent in C.R.P.No.3557 of 2013. The facts and circumstances of the case which were dealt with in the foregoing discussions make it clear that M/s.Southern Housing Corporation Ltd., all along kept quiet and did nothing even when the suit filed by E.Selvaraj seeking a declaration that the agreement between him and M/s.Southern Housing Corporation Ltd., was binding on the land owners namely, Nithyanantham and Poornachandran suffered vital blow of rejection of the plaint as the plaint therein was rejected under Order VII Rule 11. Now the present attempt made by M/s.Southern Housing Corporation Ltd., by filing M.P.No.2 of 2013 is nothing but an act calculated to support the attempt of abuse of process of court made by the revision petitioner. Apart from that when the review applications themselves are held to be not maintainable, there shall be no question of permitting a third party namely, M/s.Southern Housing Corporation Ltd., to get impleaded in the revision petition filed against the dismissal of the review applications as not maintainable. Hence, this Court has come to the conclusion that M.P.No.2 of 2013 also deserves to be dismissed.

55.In the result, the Civil Revision Petitions are dismissed with cost of Rs.25,000/-. M.P.No.2 of 2013 in C.R.P.No.3557 of 2013 is also dismissed Consequently, connected miscellaneous petitions are closed.

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