REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APELLATE JURISDICTION

CIVIL APPEAL NOS. 736-737 OF 2008

THE CHAIRMAN & MANAGING DIRECTOR,
TNHB & ANR .. APPELLANTS

VERSUS

S. SARASWATHY & ORS. .. RESPONDENTS

WITH

C.A. Nos. 745-746, C.A. Nos. 741-742, C.A. Nos. 553-554, C.A. Nos. 747-748, C.A. Nos. 555-556, C.A. Nos. 706-707, C.A. Nos. 709-710, C.A. Nos. 828-829, C.A. Nos. 833-834, C.A. Nos. 743-744, C.A. Nos. 739-740 and C.A. No. 712 of 2008

J U D G M E N T

VIKRAMAJIT SEN, J.

1. The Appellant, Tamil Nadu Housing Board, is taking exception to the Judgment dated 07.04.2006 passed by the High Court in the Writ Appeal Nos. 603 to 615 of 1997 and the Judgment dated 27.09.2006 passed in the Review Application Nos. 108 to 120 of 2006 in the Writ Appeal Nos. 603 to 615 of

1997, whereby the High Court had directed the Appellant Government/State to issue No Objection Certificates to the contesting Respondents before us.

2. The Government of Tamil Nadu initiated land acquisition proceedings on behalf of the Tamil Nadu Housing Board to acquire 513.52 acres of land including the land in question, in and around Chennai, under the Land Acquisition Act, 1894 (hereinafter 'the Act') for the purpose of Ambattur Neighborhood Housing Scheme. Notification under Section 4 of the Act was issued on 23.10.1975 and published on 12.11.1975, followed by the Declaration under Section 6 of the Act issued and published on 09.11.1978 and 10.11.1978 respectively. The land in question in the present Appeals, in all 1 acre and 10 cents, owned originally by V. Perumal, forms part of Survey Nos. 271/1 and 271/5 of the village Mogappair. The total area of the land falling under the said Survey No. 271 is 4 acres and 10 cents: the said 1 acre and 10 cents owned by V. Perumal and another 3 acres owned by A. J. Ponnial and A. S. Naidu. The aforementioned three persons had obtained an approved layout plan from the Director of Town Planning on 07.03.1975 with respect to the said Survey No. 271.

3. When the Notifications for acquisition came to be passed, two batches of writ petitions were filed before the High Court; the first batch consisted of W.P.

No. 7625 of 1982 filed by P. Velu, son of V. Perumal, while the second batch included W.P. Nos. 7499 and 8328 of 1983 filed by A. S. Naidu. The former batch assailed the Constitutional validity of Sections 11(1) and 23(1) of the Act and contended that the compensation determined as on the date of publication of a notification under Section 4 of the Act was inequitable and arbitrary. The second batch laid an assault to the Notifications published under the Act in their entirety. It should be noted immediately that the statute has subsequently been amended to mandate that an Award has to be passed within two/three years, thereby substantially addressing the grievance of compensation being a pittance owing to it being calculated after several years of the Notification.

4. In the batch matter concerning A. S. Naidu, the parties fought a strenuous battle which resulted in a lengthy discourse and an elaborate order of the High Court. The writ petitioners therein averred that the remarks, which were offered by the requisitioning body, i.e. the Housing Board, upon furnishing to it the Objections of the landowners, had not been communicated to the latter. Such remarks along with the Objections of the landowners formed the basis for enquiry under Section 5A of the Act; ergo, knowledge of those remarks or contentions of the requisitioning body were crucial for the landowners to sustain their objections. This contention of the writ petitioners that Rule 3(b) of the Tamil Nadu Land Acquisition Rules has been infracted

because of non-furnishing of the said remarks to the landowners found favour with the High Court. The High Court reasoned that the furnishing of the remarks to the landowners was not just another formality or discretionary procedure to be waived of at the whims of the Authorities; and their non-communication had the effect of "setting at naught the very purpose of the enquiry". Another contributory factor buttressing the case of the writ petitioners was that the Declaration under Section 6 was not in conformity with the proviso of Section 6(1) of the Act, which prescribes that where land is being acquired for the benefits of a Local Authority, a part of the compensation payable for the acquisition shall have to be borne from the fund controlled or managed by the concerned Local Authority. Since the Tamil Nadu State Housing Board, i.e. the beneficiary of the subject acquisition proceedings, was held by the High Court to be such a Local Authority and the Declaration under Section 6 specifically provided that the entire compensation was to be paid out of public revenue without any portion from the fund maintained by the Housing Board, it was plain that the Declaration under Section 6 of the Act was not in accordance with the proviso of Section 6(1) of the Act. On these two counts thus, the Writ Petition of A. S. Naidu along with some of the other parties was partly allowed by the High Court by granting the relief of quashing of the said Declaration vide Order dated 08.01.1988. The Court, however, left

the Notification issued under Section 4 of the Act intact, and it declined relief to those writ petitioners, who acquired ownership of the land under acquisition after the issuance of the Notification under Section 4 of the Act.

5. A. S. Naidu, thereafter, approached this Court in SLP Nos. 11353-55 of 1988 (**A. S. Naidu.** v. State of Tamil Nadu), challenging the Judgment dated 08.01.1988, to the extent the High Court refused to interfere with the Notification issued under Section 4 of the Act. However, the State accepted the decision of the High Court and initiated fresh enquiry proceedings including rehearing of the objections preferred under Section 5A. When the matter reached this Court, it opined that the three year limitation period to publish a fresh Declaration under Section 6 of the Act, as amended by the Act 68 of 1984, had already lapsed, especially in view of non-assailment of the Judgment dated 08.01.1988 by the State, and held it to have attained finality. In this backdrop, this Court observed vide Order dated 21.08.1990 that:

> "4. On the date the declaration was made there were hardly two days left for completion of three years and after the High Court order on 8-1-1988, the period has already lapsed but no declaration has been published and the same can no longer be made on the basis of preliminary notification at present. In the absence of challenge by the State, the order of the High Court against it has become final.
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> 5. We are of the view that in these circumstances it would no more be available to the State to make the requisite declaration under Section 6 of the Act. The acquisition itself is quashed but

> we make it clear that it is open to the State Government in case it is satisfied that acquisition is necessary in public interest, it is free to exercise its power of eminent domain and make a fresh preliminary notification. The special leave petitions are disposed of accordingly."

6. Meanwhile certain developments occurred, having crucial bearing on the present matter. The State passed Award No. 9 of 1983 on 20.06.1983 with respect to 22.91 acres of land, which included the suit land as well as the land of A. S. Naidu. Pursuant to that Award, P. Velu, son of V. Perumal, received the compensation of Rs. 26615 and the possession of the land was taken without opposition, by the State on 01.07.1983. Despite the acquisition of the suit land having been completed in all respects thereto, P. Velu illegally divided the suit land into twelve plots and sold them in the year 1987 to the contesting Respondents before us vide registered Sale Deeds, after over three years of vesting of land into the State. The Respondents are educated, some of them are even Advocates and would be expected to have made a title search. Subsequent to the passing of the Judgment dated 08.01.1988 by the High Court and the Order dated 21.08.1990 by this Court, the second batch of Writ Petition of P. Velu proved futile and eventually came to be rejected by the High Court on 22.07.1994, both on the grounds of merits and delay. At this juncture, it merits a mentioning that the batch of writ petitions including that of P. Velu was principally concerned with the issue of fair determination of compensation

at market value of the property on the date of passing of the Award, instead of taking the date of issuance of notification under Section 4 of the Act as the pivotal point. No appeal arose from the dismissal of these writ petitions, thus rendering finality to the acquisition proceedings qua the writ petitioners in that batch.

7. In 1996, the contesting Respondents before us, who are the vendees of P. Velu, filed another batch of writ petitions seeking protection of their possession and enjoyment over the suit land, and direction to the respondents therein to issue them No Objection Certificates to enable them to put up constructions on the suit land. There is no denial and rebuttal by them that they had bought the suit land from P. Velu after the Award had been passed. Nonetheless, they put forth their case before the High Court premised entirely on the cornerstone of the Order dated 21.08.1990 passed by this Court in **A. S. Naidu**, which they contended had the effect of quashing the acquisition proceedings *in toto*. They further maintained that A. S. Naidu, allegedly a co-owner with P. Velu of the land property in Survey No. 271, was authorized by P. Velu to take all the necessary steps to get approvals for the planned layout as well as to initiate subsequent proceedings in order to protect their common interest in the Survey No. 271. The Single Judge of the High Court vide common Judgment dated 19.02.1997 allowed the Writ Petitions of the Respondents, believing that this

Court had quashed the acquisition proceedings in totality; and it also followed some earlier order of the High Court. The Division Bench while dismissing the Appeals preferred by the Appellant vide common impugned Judgment dated 07.04.2006 was of the opinion that the original owner of the suit land and the vendor of the Respondents was A. S. Naidu. When this factual error was brought to its notice in the Review Applications, the Division Bench then reiterated the observations of the Single Judge that this Court had quashed the entire acquisition proceedings as far back in 1990, and since no proceedings had been initiated thereafter, the question of who the original owner was made no material difference. It thus affirmed the order and direction of the Single Judge and dismissed the Review Applications vide common impugned Judgment dated 27.09.2006.

8. The Respondents contend that even if the benefits of the Order dated 21.08.1990 passed by this Court in **A. S. Naidu** is confined only to the parties to those proceedings before this Court, they may nevertheless submit that acquisition in respect of the entire Survey No. 271 had been challenged by A.S. Naidu, for himself and also on behalf of P. Velu and the view taken by this Court should enure to their benefit.

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9. We will first consider what implication the Order dated 21.08.1990 passed by this Court has on the case in hand. The High Court was of the opinion that the Order dated 21.08.1990 had an all-encompassing import and it annulled the entire acquisition proceedings. In that respect, we can gainfully extract from the Order passed by a three-Judge Bench of this Court in **Abhey Ram v. Union of India,** (1997) 5 SCC 421:

> "10. The question then arises is whether the quashing of the declaration by the Division Bench in respect of the other matters would enure the benefit to the appellants also. Though, prima facie, the argument of the learned counsel is attractive, on deeper consideration, it is difficult to give acceptance to the contention of Mr Sachar. When the Division Bench expressly limited the controversy to the quashing of the declaration qua the writ petitioners before the Bench, necessary consequences would be that the declaration published under Section 6 should stand upheld.
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> 11. It is seen that before the Division Bench judgment was rendered, the petition of the appellants stood dismissed and the appellants had filed the special leave petition in this Court. If it were a case entirely relating to Section 6 declaration as has been quashed by the High Court, necessarily that would enure the benefit to others also, though they did not file any petition, except to those whose lands were taken possession of and were vested in the State under Sections 16 and 17(2) of the Act free from all encumbrances. <u>But it is seen that the Division Bench confined the controversy to the quashing of the declaration under Section 6 in respect of the persons qua the writ petitioners before the Division Bench. Therefore, the benefit of the quashing of the declaration under Section 6 by the Division Bench does not enure to the appellants</u>.
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> 12. It is true that a Bench of this Court has considered the effect of such a quashing in Delhi Development Authority v. Sudan

> Singh (1997) 5 SCC 430. But, unfortunately, in that case the operative part of the judgment referred to earlier has not been brought to the notice of this Court. Therefore, the ratio therein has no application to the facts in this case. It is also true that in Yusufbhai Noormohmed Nendoliya v. State of Gujarat (1991) 4 SCC 531 this Court had also observed that it would enure the benefit to those petitioners. In view of the fact that the notification under Section 4(1) is a composite one and equally the declaration under Section 6 is also a composite one, unless the declaration under Section 6 is quashed in toto, it does not operate as if the entire declaration requires to be quashed. It is seen that the appellants had not filed any objections to the notice issued under Section 5-A." (Emphasis supplied)

10 We also have the advantage of a Judgment dated 29.01.2010 passed by a Coordinate Bench of this Court in Civil Appeal Nos. 3148-49 of 2002, titled as Tamil Nadu Housing Board v. L. **Chandrasekaran** (2010) 2 SCC 786. **Chandrasekaran** was also seized of the acquisition proceedings we are dealing with, although involving the issue of release of land under Section 48 of the Act, but in respect of different survey numbers. The respondents therein pressed several grounds but finally rested their claim on the basis of the Order dated 21.08.1990 passed by this Court in the case of **A.S. Naidu**. One of the issues before this Court was to decide whether the Order passed by this Court in **A. S. Naidu** had the effect of nullifying the acquisition in its fullness. This Court observed in **Chandrasekaran** that it was not possible to return a finding that while disposing of the special leave petitions preferred by **A.S. Naidu** this Court had quashed the entire acquisition proceedings. This Court underscored

that **A.S. Naidu** did not even make a prayer before the High Court for quashing the preliminary Notification issued under Section 4 of the Act, and it observed: "…in the absence of a specific prayer having been made in that regard, neither the High Court nor this Court could have quashed the entire acquisition." The Court then took into account the cases of Shyam Nandan Prasad v. State of Bihar (1993) 4 SCC 255, **Abhey Ram**, Delhi Admin. v. Gurdip Singh Uban (1999) 7 SCC 44 and Delhi Admn. v. Gurdip Singh Uban (2000) 7 SCC 296 and reiterated the established and consistent view of this Court that quashing of acquisition proceedings at the instance of one or two landowners does not have the effect of nullifying the entire acquisition. Since the observations contained in **Chandrasekaran** are apposite for our purposes, we think it advantageous to extract the following paragraphs therefrom:

> **15.** The first issue which requires consideration is whether the order passed by this Court in *A.S. Naidu case* has the effect of nullifying the acquisition in its entirety. In this context, it is apposite to mention that neither the appellant Board nor have the respondents placed before the Court copies of the writ petitions in which the acquisition proceedings were challenged, order(s) passed by the High Court and the special leave petitions which were disposed of by this Court on 21-8-1990 and without going through those documents, it is not possible to record a finding that while disposing of the special leave petitions preferred by A.S. Naidu and others, this Court had quashed the entire acquisition proceedings. So far as A.S. Naidu is concerned, he did not even make a prayer before the High Court for quashing the preliminary notification issued under Section 4(1) of the Act.

16. This is evident from the prayer made by him in Writ Petition No. 7499 of 1983, which reads as under:

> "For the reasons stated in the accompanying affidavit, it is most respectfully prayed that this Hon'ble Court may be pleased to issue a writ of certiorari or any other proceeding or any other appropriate writ or direction or order in the nature of a writ to call for the records of the first respondent relating to GOMs No. 1502, Housing and Urban Development Department dated 7-11-1978 published in the Tamil Nadu Government Gazette Extraordinary dated 10-11-1978 in Part II Section 2 on pp. 22 to 26 and quash the said notification issued under Section 6 of the Land Acquisition Act, 1894 insofar as it relates to the land in the petitioners' layout approved by the Director of Town Planning in .LPDM/DTP/2/75 dated 7-3-1975 in Survey Nos. 254, 257, 258, 260, 268 and 271 in Mogapperi Village, No. 81, Block V, Saidapet Taluk, Chingleput District and render justice."

From the above reproduced prayer clause, it is crystal clear that the only relief sought by Shri A.S. Naidu was for quashing the notification issued under Section 6 insofar it related to the land falling in Survey Nos. 254, 257, 258, 260, 268 and 271 in Mogapperi Village, No. 81, Block V, Saidapet Taluk and in the absence of a specific prayer having been made in that regard, neither the High Court nor this Court could have quashed the entire acquisition. This appears to be the reason why the Division Bench of the High Court, while disposing of Writ Appeals Nos. 676 of 1997 and 8-9 of 1998 observed that quashing of acquisition by this Court was only in relation to the land of the petitioner of that case and, at this belated stage, we are not inclined to declare that order dated 21-8-1990 passed by this Court had the effect of nullifying the entire acquisition and that too by ignoring that the appellant Board has already utilised portion of the acquired land for housing and other purposes. Any such inferential conclusion will have disastrous consequences inasmuch as it will result in uprooting those who may have settled in the flats or houses constructed by the

> appellant Board or who may have built their houses on the allotted plots or undertaken other activities.
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> **17.** We may also usefully refer to the judgments of this Court in Shyam Nandan Prasad v. State of Bihar, Abhey Ram v. Union of India (para 11), Delhi Admn. v. Gurdip Singh Uban (paras 8, 9 and 11) and Delhi Admn. v. Gurdip Singh Uban, in which it has been consistently held that quashing of acquisition proceedings at the instance of one or two landowners does not have the effect of nullifying the entire acquisition. Moreover, in the absence of challenge by L. Chandrasekaran to the order passed by the Division Bench of the High Court in Writ Appeal No. 9 of 1998, his legal representatives do not have the locus to contend that the order dated 21-8-1990 passed by this Court in SLPs (C) Nos. 11353-55 of 1988 had the effect of nullifying the entire acquisition.

11 We are respectfully in accord with the observations of Coordinate Benches that unless the Declaration under Section 6 or the Notification under Section 4 of the Act is not explicitly quashed *in toto* or in its wholeness by the Court, the benefits of relief granted by the Court would be effective only qua the parties before it. As already adumbrated above, at the time the Appeal of A. S. Naidu came to be decided, the three year limitation period to publish a declaration under Section 6 of the Act had already expired, making it impossible for the Government to complete a fresh process culminating in another declaration; and it was for this reason that the acquisition was quashed by the Court.

12 It has been repeatedly reiterated by this Court that those who have missed the boat in challenging the acquisition proceedings, who sat idle and

have let the grass grow under their feet cannot, thereafter, be permitted to jump on the bandwagon of others who entered the portals of the Court at the appropriate time and thereafter obtained favourable orders. Significantly, in **Chandrasekaran** the Court was alive to the reality of utilization of large chunks of land by the State for housing scheme; and in this scenario, it was obviously and rightly reluctant and facially hesitant to quash the acquisition proceedings *in toto,* knowing that that would result in grave consequences to society. In this analysis, the Respondents including their vendor, P. Velu, cannot be permitted to take any advantage of the Orders passed by this Court in **A. S. Naidu**.

13 There could be cases however, where the acquisition proceedings are deracinated, annulled and quashed *in toto*. Such grounds could include, to wit: absence of public purpose; non publication of the substance of the notification under Section 4 as required, denuding the rights of the landowners; complete lack of consideration of the objections by the authorities, thus obscuring the public purpose; fraudulent or mala fide or colourable exercise of the power of eminent domain behind the smokescreen of public purpose; inherent defect or illegality in the issuance of the notification under Section 4; acquiring of land for a private company by illegally bypassing the extant statutory procedure etc.

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14 Even if we assume that the Order passed by this Court swept away the entire acquisition proceedings, the claim of the Respondents is still unsustainable. In the Judgment dated 08.01.1988 passed by the High Court in the case of **A. S. Naidu**, it has been clarified that "only those persons, who are the owners on the date of Section 4(1) Notification alone can question the validity of the acquisition…when the property was already notified for acquisition, if the petitioners had come to purchase the property, they cannot have any right to agitate with regard to procedural violation." There is thus no confusion that the relief of quashing of the Declaration under Section 6 of the Act was expressly limited to some while being plainly denied to others, signifying thereby, that the Declaration under Section 6 was left untouched in the other cases. In **A. S. Naidu**, this Court annulled the Notification issued under Section 4 on the premises of limitation. This would mean that the rest of the acquisition proceedings was left untouched by this Court in **A. S. Naidu**.

15 The second factor, detaching the case of the contesting Respondents even farther, is that since the Respondents had purchased the suit land after the Award had been passed and possession of the land had been taken by the State, they could not have acquired any rights against the State. P. Velu did not bring down the acquisition proceedings qua his land, but on the contrary, by

accepting compensation, had manifested his acceptance of the Award. In these circumstances, once the land stood vested in the State under Section 16 of the Act, P. Velu and his vendees, namely the Respondents, could not have created and engineered rights or interests in the property against the State, except the right of seeking and receiving enhanced compensation. We are mindful that the Land Acquisition Act, 1894 as applicable to the State of Tamil Nadu does not specifically preclude the land owners from entering into sale transactions during an ongoing acquisition proceeding. But as long as the acquisition proceedings are not invalidated, any agreement creating or altering or extinguishing rights with respect to the land under acquisition will not be effective or efficacious against the State.

16. As we have noted above, the additional case of the Respondents is that A. S. Naidu, as a co-owner or even otherwise, had challenged the acquisition proceedings qua the entire Survey No. 271 on behalf of himself and P. Velu also. We are sorry to record that we have found not a grain of evidence supporting their specious claim. The cases of A. Viswanatha Pillai v. The Special Tahsildar for Land Acquisition No. IV (1991) 4 SCC 17 and Jalandhar Improvement Trust v. State of Punjab (2003) 1 SCC 526 relied upon by them in this context, where reliefs were granted to the co-owners, are distinguishable from the facts obtaining in the instant case. The Respondents or even P. Velu

cannot assert to be co-owner with ***A. S. Naidu*** merely because they happened to own plots in the larger or main Survey No. 271 in the backdrop of that Survey having been fractured into smaller Survey numbers, or even because an approved layout plan had been granted of the larger Survey number. Nor do we think that owning a plot in the same survey number ipso facto authorises A.S. Naidu to litigate on behalf of P. Velu also. The writ petition of A. S. Naidu is also conspicuous in that it does not lay any claim to represent P. Velu.

17 We are unable, for the manifold reasons stated above, to uphold the impugned common Judgments. The same are set aside accordingly. Civil Appeals stand allowed. The Writ Petitions are held to be devoid of any merit and are dismissed. Parties to bear their respective costs.

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……..……..……J
(VIKRAMAJIT SEN)

……..……..……J
(PRAFULLA CHANDRA PANT)

NEW DELHI;
11TH MAY 2015.