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T.R. BOOPALAN & ORS.

v.

TAMIL NADU HOUSING BOARD AND ORS.

(Civil Appeal No. 4926 of 2008)

AUGUST 7, 2008

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[ALTAMAS KABIR AND MARKANDEY KATJU, JJ.]

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Land Acquisition Act, 1894 – s.4 – Acquisition proceedings – Quashing of s.4 Notification by High Court – Effect of – Appellants-land owners discovered later that in writ petition area of land owned by them was wrongly mentioned – Application for amendment, dismissed – Appellants seeking ‘No Objection Certificate’ for construction on portion owned by them – Authorities refusing to grant on ground that appellants entitled to relief only to the extent of land indicated in High Court’s order – Held: Not justified – Authorities wrongly confined ‘NOC’ to the area of land mentioned in the writ petition – Since the entire lands stood released from the acquisition proceedings, appellants were entitled to grant of ‘NOC’ for land owned by them – Judgment/Order – Correction of typographical error owing to error in pleading.

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Appellants were owners of plot of land in Survey No.188/4 measuring 0.81 acres, which was subject to acquisition proceedings. Appellants filed writ petition challenging the acquisition proceedings which was allowed. Thereafter appellants discovered that by way of inadvertence, the measurement of land was shown in writ petition as 0.81 cents instead of 0.81 acres and moved an application for correcting the mistake. The said application was dismissed by the High Court.

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Appellants made an application to the Housing Board for grant of a “No Objection Certificate” in respect of the lands comprised in Survey No.188/4 for raising constructions thereupon. It was rejected. The appellants filed a

fresh writ petition before the High Court, for a direction to the authority concerned to issue a "No Objection Certificate" in respect of the aforesaid land consequent upon the order passed in the earlier Writ Petition. The High Court directed the respondents to consider the representation of the appellants.

The Respondent No.1 preferred an appeal which was dismissed. As the matter was not proceeded any further, the order of High Court became final between the parties. Thereafter, Housing Board offered to give a "No Objection Certificate" to the appellants for 0.81 cents only.

The appellants filed a fresh Writ Petition, for a direction upon the Respondent No. 1 to issue a "No Objection Certificate" to the appellants in respect of the entire 0.81 acres comprising Survey No. 188/4, which was allowed.

The Housing Board filed appeal, which was allowed by the Division Bench of High Court holding, that the appellants were entitled to relief only to the extent of the land indicated in the Single Judge's order. The Division Bench also held that it could not ignore the dismissal of the appellants' application for amending the said order which had also attained finality as no appeal had been preferred against the same. Hence the present appeal.

Allowing the appeal, the Court

HELD: 1. There is no dispute with regard to the fact that the land comprised in Survey No. 188/4 measures 0.81 acres. There is also no dispute that in deciding the Writ Petition filed by the appellants challenging the Notification under s.4(1) of the Land Acquisition Act, 1894, in respect of Survey No. 188/4, comprising 0.81 acres, the said notification was quashed. When the parties are not disputing upon the basic fact that the Notification in respect of the entire Survey No.188/4 was quashed, there could be no justification in taking a technical objection that since

A the Writ Petition mentioned the relief sought by the writ petitioners/appellants to be in respect of 0.81 cents, the appellants must be held to such prayer, even if apparently a mistake had been committed. [Paras 16, 17] [1023 D,E,F,G]

B 2. When the Notification under s.4(1) of the L. A. Act, with regard to Survey No. 188/4 had been quashed in respect of the entire lands comprising 0.81 acres, there was no reason for the respondent No.1 to limit the grant of "No Objection Certificate" only to the area mentioned in the Writ Petition. Since the entire lands stood released C from the acquisition proceedings, the appellants were entitled to apply for "No Objection Certificate" in respect of same but the Respondent No.1, for reasons best known to it, chose to confine itself only to the area of land D mentioned in the Writ Petition, which was clearly an unintended error. [Para 18] [1024 C,D,E]

CIVILAPPELLATE JURISDICTION : Civil Appeal No. 4926 of 2008

E From the final Judgment dated 31.1.2007 of the High Court of Judicature at Madras in Writ Appeal No. 547 of 2005 and W.A.M.P. No. 1019 of 2005

C.A. Sundaram, Rajiv Dutta, S. Ramesh, R. Venkataraman, Rohini Musa, Dharmendra Kumar Sinha, Zafar Inayat, Abhishek Gupta, A.V. Arun and K. Uma Shankar for the Appellants.

F V. Krishna Murthy A.K. Ganguli, T. Harish Kumar for the Respondents.

The Judgment of the Court was delivered by

G **ALTAMAS KABIR, J.** 1. Leave granted.

2. The appellants herein claim to be the owners of a plot of land measuring 0.81 acres comprised in Survey No.188/4 in Thiruvanmiyur village falling under Chengalpattu District, now part of Mylapore Triplicane Taluk, Chennai District. The said H land which was the subject matter of a Notification under Sec-

tion 4(1) of the Land Acquisition Act, 1894, hereinafter referred to as "the L.A. Act", issued pursuant to G.O. MS 36/Housing, published by the Tamil Nadu Government in the Official Gazette on 19.2.1975. It is the case of the appellants that on 28.3.1983 an Award was made in respect of the said lands which was registered in the name of the appellants.

3. In 1991, the appellants filed Writ Petition No.16207 of 1991 challenging the acquisition proceedings in respect of Survey No.188/4 measuring 0.81 acres. According to the appellants, the said writ petition was allowed and the Notification under Section 4(1) of the L.A. Act in respect of Survey No.188/4 of the aforesaid village was quashed. It appears that thereafter it was discovered by the appellants that through inadvertence the measurement of the land had been shown in the writ petition as 0.81 cents instead of 0.81 acres and an application was thereupon made before the High Court to correct the mistake and to amend the relief in respect of 0.81 cents to 0.81 acres since there was no dispute regarding the same and the correct figure had been mentioned both by the Tamil Nadu Housing Board and the State of Tamil Nadu. The said application for amendment of the relief was dismissed on 23.2.1999 by the High Court on the ground of laches.

4. Subsequently, the appellant applied to the Tamil Nadu State Housing Board for issuance of a "No Objection Certificate" in respect of the lands covered by Survey No.188/4 to enable the appellants to raise construction thereupon. It appears from the records that an inquiry was conducted into the status of the land and in a report received from the District Revenue Officer, LA, Tamil Nadu Housing Board Schemes, it was revealed that the Government machinery was hesitant to take any further action to question the correctness of the judgment of the High Court allowing the appellants' writ petition. On the basis of the above, the appellants appear to have made an application to the Tamil Nadu State Housing Board for grant of a "No Objection Certificate" in respect of the lands comprised in Survey No.188/4 for the purpose of raising constructions thereupon.

A As the same was rejected, the appellants filed a fresh writ petition before the Madras High Court, being Writ Petition No.272 of 2000, on 10.1.2000, for a direction upon the authority concerned to issue a "No Objection Certificate" in respect of the aforesaid land consequent upon the order passed in the earlier
B Writ Petition. The High Court directed the respondents to consider the representation of the appellants and to pass orders in accordance with law.

5. The Respondent No.1 preferred an appeal against the order of the learned Single Judge, which was dismissed on 10th
C April, 2003, on the ground of delay. As the matter was not proceeded with further, the order of the learned Single Judge became final between the parties. The appeal filed by the Respondent No.2 was also dismissed. Thereafter, on 13th February, 2004, the Tamil Nadu State Housing Board offered to give a
D "No Objection Certificate" to the appellants for 0.81 cents c.m.y.

6. The appellants were constrained to file a fresh Writ Petition, being W.P. No. 9488 of 2004, on 5th April, 2004, for a direction upon the Respondent No. 1 to issue a "No Objection Certificate" to the appellants in respect of the entire 0.81 acres
E comprising Survey No. 188/4 of Thiruvanmiyur. The writ petition was allowed on 16th August, 2004, to do substantial justice to the appellant without being hindered by technicalities.

7. The Tamil Nadu State Housing Board preferred Writ
F Appeal No. 547 of 2005 against the judgment and order of the learned Single Judge which was allowed by the Division Bench on 31st January, 2007, upon holding, inter alia, that the appellants herein were entitled to relief only to the extent of the land indicated in the Single Judge's order and that equity could not be applied to one of the parties alone. The Division Bench also
G held that it could not ignore the dismissal of the appellants' application for amending the said order which had also attained finality as no appeal had been preferred against the same.

8. On behalf of the appellants, it was submitted by Mr.
H Sundaram, learned senior counsel, that the Division Bench of

the High Court failed to consider the appellants' case in its true perspective and allowed itself to be swayed by the fact that the decision of the learned Single Judge was rendered on the basis of a judgment which had been overruled. The Division Bench of the High Court relied upon the principle that if a judgment is rendered on the basis of a decision, which had been overruled, any decision taken on the basis of the overruled judgment will be void. Mr. Sundaram submitted that the said principle would have no application to the facts of the present case since the Division Bench had itself concluded that the decision in the earlier case had become final between the parties since the appeal preferred therefrom had been dismissed.

9. Mr. Sundaram urged that in the present case, the only question which requires an answer is whether having regard to the fact that the Section 4(1) Notification in respect of Survey No. 188/4 had been quashed in the earlier proceedings, the "No Objection Certificate" asked for by the appellants could be confined only to 0.81 cents and not the entire land comprised in Survey No. 188/4. It was submitted that it was the understood case of all the parties that the "No Objection Certificate" had been asked for in respect of the entire land comprised in Survey No. 188/4 and that the Writ Petition was filed for a direction on the Tamil Nadu State Housing Board for issuance of such "No Objection Certificate" for the entire land, though through inadvertence the area in the Writ Petition was referred to as 0.81 cents in place of 0.81 acres. It was submitted that the same would be evident from the counter-affidavit filed on behalf of the Housing Board.

10. Mr. Sundaram referred to a copy of Tamil Nadu Government Gazette dated 26th March, 1975 containing details of the lands acquired for the purpose of the Tamil Nadu Housing Board, which includes Survey No. 188/4 showing the extent of the area comprised in the said Survey as 0.81 acres.

11. In addition to his aforesaid submissions, Mr. Sundaram also pointed out that in the earlier writ petition filed by the ap-

A appellants, the learned Single Judge had quashed the Notifica-
tion under Section 4(1) of the Land Acquisition Act, in its appli-
cation to Survey No. 188/4 in its entirety. Once the entire land
comprised in Survey No. 188/4 stood released from the acqui-
sition proceedings, the appellants were free to apply for a "No
B Objection Certificate" to the Respondent No.1 for the entire lands
and the respondent No.1 was not entitled to confine the grant of
such "No Objection Certificate" only to the area mentioned in
the Writ Petition.

C 12. It was submitted that the Division Bench of the High
Court erred in reversing the Judgment of the Learned Single
Judge which had taken a realistic view of the matter in order to
do justice between the parties.

D 13. On behalf of the Tamil Nadu State Housing Board, Mr.
Krishna Murthy, learned senior advocate, attempted to justify
the view taken by the Division Bench upon holding that the prayer
made in the Writ Petition by the appellants herein had been
granted and they could therefore have no grievance on such
score. In fact, the Tamil Nadu State Housing Board had offered
and was always willing to grant the "No Objection Certificate" in
E respect of 0.81 cents of land in respect of which the petitioner's
Writ Petition had been allowed.

F 14. Mr. Krishna Murthy reiterated the reasoning of the High
Court indicating that what is sauce for the goose is sauce for
the gander. He urged that while after the appeal preferred by
the Respondents against the order of the learned Single Judge
quashing the Section 4(1) Notification in respect of Survey No.
188/4 was dismissed on the ground of delay, no further steps
were taken in the matter, similarly, when the appellant's appli-
cation for correction of the area of land mentioned in the Writ
G Petition was rejected, no further steps were also taken by the
appellants against the said order. In other words, as in the case
of the Respondents so also in the case of the appellants, the
order of the learned Single Judge rejecting the application for
correction of the area of land in the Writ Petition had also be-
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come final and the appellant was, therefore, disentitled from asking for the same relief in a round about manner. Mr. Krishna Murthy conceded that the land comprised in Survey No. 188/4 measured 0.81 acres, but according to him, without proper evidence, it could not be taken for granted that the appellants were the only persons entitled to the entire land comprised in Survey No. 188/4. It was urged that in such a scenario, the Division Bench had quite rightly set aside the order of the learned Single Judge for the aforesaid reasons.

15. Having heard learned counsel for the respective parties, we are unable to agree with the reasoning of the Division Bench of the High court in allowing the Writ Petition filed by the Respondent No.1 herein.

16. There is no dispute with regard to the fact that the land comprised in Survey No. 188/4 measures 0.81 acres. There is also no dispute that in deciding the Writ Petition filed by the appellants challenging the Notification under Section 4(1) of the Land Acquisition Act, 1894, in respect of Survey No. 188/4, comprising 0.81 acres, the said notification was quashed.

17. It is in the said circumstances that the appellants' prayer for grant of "No Objection Certificate" was considered by the learned Single Judge in the Writ Petition filed by the appellants herein. When the parties are agreed upon the basic fact that the Notification in respect of the entire Survey No.188/4 was quashed, there could be no justification in taking a technical objection that since the Writ Petition mentioned the relief sought by the writ petitioners/appellants to be in respect of 0.81 cents, the appellants must be held to such prayer, even if apparently a mistake had been committed. While a comparison had been drawn between the failure of the respondents to take further steps in respect of the Order passed by the High Court quashing the Section 4(1) Notification in respect of Survey No. 188/4 and the failure of the appellants to take further steps on the dismissal of their application for correction of the relief prayed for in the Writ Petition by amending the area mentioned in the Writ

- A Petition for which relief has been sought, in our view, such a comparison is not well-founded. While in the first matter, a decision of a Single Judge on merits was being questioned in appeal, in the second matter, there was no challenge to the merits of the decision of the learned Single Judge but an application
- B had been made merely for correction of an error in the Writ Petition itself with regard to the area for which relief was sought.

18. In our view, the two above-mentioned cases stand on different footings and cannot be compared. Furthermore, there is force in Mr. Sundaram's other limb of submission that when
- C the Notification under Section 4(1) of the L. A. Act, with regard to Survey No. 188/4 had been quashed in respect of the entire lands comprising 0.81 acres, there was no reason for the respondent No.1 to limit the grant of "No Objection Certificate" only to the area mentioned in the Writ Petition. Since the entire
- D lands stood released from the acquisition proceedings, we are of the view that the appellants were entitled to apply for "No Objection Certificate" in respect of same but the Respondent No.1, for reasons best known to it, chose to confine itself only to the area of land mentioned in the Writ Petition, which according
- E to us was clearly an unintended error.

19. In such circumstances, we are unable to sustain the decision of the Division Bench, which is set aside. We, therefore, restore the decision of the learned Single Judge by which
- F the Writ Petition was allowed.

20. The present appeal is, accordingly allowed, but there will be no order as to costs.

D.G.

Appeal allowed.