

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 17.06.2014

Coram:-

The Honourable Mr. Justice T.Raja

Writ Petition Nos.23902, 23903 & 24197 of 2007

1. K.Ayyamuthu
2. S.Chinnusamy
3. V.Muthusamy
4. Goundappan
5. Sellappan
6. Gandiammal
7. K.Govinda Udyar

8. Minor Palanisamy rep. by
mother and guardian Mathammal,
W/o.Mariappan.

9. Palaniappan, S/o.Pachiappan
- 10.Palaniappan, S/o.Pachamuthu. ... Petitioners in
WP No.23902 of 2007.

1. S.Chinnusamy
2. Goundappan
3. Gandiammal
4. Subramanian ... Petitioners in
WP No.23903 of 2007.

1. Kandasamy

2. M.Ganesan

... Petitioners in
WP No.24197 of 2007.

Vs.

1.The State of Tamil Nadu rep.
By its Secretary to Government,
Industries Department,
St. George Fort,
Chennai 600 009.

2.The Special Tahsildar (L.A.).
Coke Oven Plant Project,
Mettur, Salem District.

3. The Special Tahsildar (L.A.),
Pig Iron Plant Project,
Mettur, Salem District.

4. Southern Iron and Steel
Company Ltd.,
(SISCOL) now known as
M/s. JSW Steel Limited,
rep. By its Managing Director,
Pottaneri,
M.Kalipatti Village, Mecheri,
Salem District.

5. The Revenue Divisional Officer,
Mettur, Salem District. ... Respondents in
all W.Ps.

WP.23902/07: Petition under Article 226 of the
Constitution of India for the issuance of a writ of
certiorarified mandamus to call for the records
comprised in Award No.3/1999-2000 on the file of the
Land Acquisition Officer (LA), Coke Oven Plant Project,
Mettur/second respondent dated 30.6.1999, the true copy
of which was served on the petitioners on 27.6.2007 by

the 5th respondent and to quash the same as being null and void and consequently forbear the respondents from proceeding any further in the matter of acquisition proceeding initiated by virtue of notification issued under Section 4(1) in G.O. Ms.Nos.66, 67 & 68, Industries Department, dated 28.3.1995 in respect of the lands of the petitioners.

WP.23903/07: Petition under Article 226 of the Constitution of India for the issuance of a writ of certiorarified mandamus to call for the records comprised in Award No.2/1999-2000 on the file of the Land Acquisition Officer (LA), Coke Oven Plant Project, Mettur/second respondent dated 30.6.1999, the true copy of which was served on the petitioners on 27.6.2007 by the 5th respondent and to quash the same as being null and void and consequently forbear the respondents from proceeding any further in the matter of acquisition proceeding initiated by virtue of notification issued under Section 4(1) in G.O. Ms.Nos.66, 67 & 68, Industries Department, dated 28.3.1995, in respect of the lands of the petitioners.

WP.24197/07: Petition under Article 226 of the Constitution of India for the issuance of a writ of certiorarified mandamus to call for the records comprised in Award No.1/1999-2000 on the file of the Land Acquisition Officer (LA), Coke Oven Plant Project, Mettur/second respondent dated 10.6.1999, the true copy of which was served on the petitioners on 26.6.2007 by

the 5th respondent and to quash the same as being null and void and consequently forbear the respondents from proceeding any further in the matter of acquisition proceeding initiated by virtue of notification issued under Section 4(1) in G.O. Ms.Nos.66, 67 & 68, Industries Department, dated 28.3.1995 in respect of the lands of the petitioners.

For Petitioners in
WPs.23902 & 23903/07 : Mr.V.Ayyadurai

For Petitioner in
WP.24197/2007 : Mr.D.Shivakumaran

For R4 in all WPs : Mr.R.Gandhi, Senior
Counsel for Mr.R.G.Narendhiran

For other Respondents/State: Mr.V.S.Sethuraman,
Addl. Advocate General, assisted by
Mr.S.V.Duraisolaimalai, Addl. Govt. Pleader.

COMMON ORDER

In these three writ petitions viz., WP Nos.23902, 23903 and 24197 of 2007, challenge is made to Award Nos.3/1999-2000 dated 30.06.2009, 2/1999-2000 dated 30.06.2009 and 1/1999-20000 dated 10.06.2009 respectively on the file of R2/Land Acquisition Officer, Coke Oven Plant Project, Mettur, with a consequential prayer to forbear the respondents from proceeding with the acquisition proceedings initiated

by virtue of Notification under Section 4(1) of the Land Acquisition Act (hereinafter referred to as the '**Act**') in G.O. Ms.Nos.66, 67 and 68, Industries Department, dated 28.03.1995 insofar as those proceedings relate to the lands of the petitioners herein.

2. In fact, the present writ petitioners were parties before this Court in the earlier rounds of litigation viz.,

a) Writ Petition Nos.6799 to 6801 of 1997, challenging the Notification under Section 4(1) and Declaration under Section-6 of the Act - dismissed by a detailed order dated 31.03.1999;

b) Writ Petition Nos.8127 and 8200 of 2000 after issuance of Notice under Section 12(2) of the Act directing to surrender possession, which petitions also came to be dismissed as infructuous on 05.06.2007.

3. Now, these three writ petitions being interconnected and the issues raised pertain to the same acquisition proceedings, they are given joint

disposal by this Common Order after exhaustively hearing the submissions made by either side.

4. Mr.V.Ayyadurai, learned counsel appearing for the writ petitioners in WP Nos.23902 and 23903 of 2007, placed the following submissions.

At the instance of Southern Iron and Steel Company Ltd. (**SISCOL**) promoted by the Tamil Nadu Industrial Development Corporation Limited (**TIDCO**), vast lands to an extent of 523 acres at M.Kalipattai Village were acquired under the Land Acquisition Act in violation of Articles-14 and 300-A of the Constitution of India since the purpose of acquisition for the requisitioning body-SISCOL falls outside the scope of Section 3 (f) of the Act which defines what is 'public purpose'. In the present cases, Award was passed on 30.06.1999 and 10.06.1999 respectively without examining the merits of the challenge to the acquisition proceedings, hence, the present writ petitions are well maintainable. Though the purpose of acquisition was said to be to establish a Coke Oven Plant by the TIDCO in association with Lakshmi

Machinery Works Limited, Coimbatore, through SISCOL and the extent of land involved was about 532 acres, the present writ petitions are confined only to 3.56 and 52 acres of land which lies adjacent to residential area and the prayer of the petitioners to exclude these lands may have to be accepted on the ground that such exclusion will not affect the project. The Notification, dated 28.03.1995, issued under Section 4(1) of the Act, though specifically mentions that the lands of the petitioners are required for a public purpose ie., setting up of a Coke Oven Plant by the TIDCO in association with Lakshmi Machinery Works Limited Coimbatore through SISCOL, a Public Company incorporated for this purpose, the fact remains that during 2008, SISCOL was dissolved for amalgamation with another concern vide Order dated 22.08.2008 passed by the Bombay High Court in Company Application No.1222 of 2007. Even after the management of the beneficiary Company/SISCOL was taken over with effect from 01.04.2007, the act of the authorities in continuing the acquisition proceedings in favour of the beneficiary company, which is not in existence at all,

clearly tantamounts to fraud. In other words, since the Government did not issue any other fresh or different Notification under Section 4(1) of the Act for a new purpose, further continuation of the acquisition proceedings is ex facie illegal. In the Notification under Section 4(1) of the Act, originally, the Special Tahsildar (Land Acquisition), Pig Iron Project, Mettur, was authorized to perform the functions of the Collector under Section 5-A of the Act and therefore, if at all the acquisition proceedings were to continue, only the said authority alone can proceed further; while so, allowing the Special Tahsildar appointed for the Coke Oven Plant Project, Mettur, Salem District, to perform the functions of the Collector without there being a fresh or different Notification is absolutely illegal. In support of such argument, reliance was placed upon a decision of this Court in **TNHB v. A.P.Damodarasamy (2007-3-MLJ-189)** wherein, it was categorically held that unless the Officer is duly authorised by way of notification or order by the Government, he cannot perform the functions as provided in the Act. The petitioners being villagers with

rural background were unaware of the share-holding patterns of the constitution of the requisitioning body/SISCOL at the time of filing of the writ petition. SISCOL is neither a Government Company nor a public Concern, but very unfortunately, the respondents misled the Court by stating that SISCOL was a public Company, hence, the entire acquisition proceedings without there being any public purpose are liable to be quashed as illegal. Since there are material irregularities such as non-publication of delegation of powers to the Land Acquisition Officer concerned to act as Collector, W.P. Nos.6799 and 6800 of 1999 were filed challenging the Notification and Declaration under Section 4(1) and 6 respectively of the Act, however, those petitions were dismissed due to the fraud played with the court by the third respondent/Special Tahsildar (LA), Pig Iron Plant Project, Mettur, Salem District, who deliberately suppressed the material facts relating to the substance of the Notification under Section 4(1) of the Act and misrepresented that TIDCO has sufficient equity shares from SISCOL and that SISCOL is controlled by the Government as defined in Section 3(cc) and therefore,

the acquiring body is empowered to resort to the procedure under Chapter-II of the Act. Further, in view of non-observance of the procedure under Chapter-VII, the entire acquisition process is rendered void and it also suffers from want of jurisdiction, whereas, in the subsequent proceedings in W.P. Nos.8127 and 8200 of 2000, challenging the notice seeking delivery of possession, the respondents have categorically admitted in their counter that TIDCO holds 11% of enquiry shares only, which clearly indicates that the requisitioning body/SISCOL is neither a Corporation owned/controlled by the Government as defined in Section 3(cc) of the Act nor a Government Company falling within the definition of Section 617 of the Companies Act. Had the respondents fairly submitted these vital particulars when the earlier WP Nos.6799 to 6801 of 1999 were dealt with, the Court would not have dismissed the same.

By placing reliance upon the decision of the Apex Court reported in **1994 (1) SCC 1 (S.P.Chengalvaraya Naidu (Dead) By LRs. vs. Jagannath (Dead) by LRs. and others)**, learned counsel for the

petitioner urged this Court to quash the proceedings for the reason that fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. The Courts of law are meant for imparting justice between the parties and one who comes to the court must come with clean hands. But, in the present case, when the respondents themselves clearly admitted in the counter affidavit filed in WP Nos.8127 and 8200 of 2000 to the effect that TIDCO owned only 11% shares of SISCOIL and thereby, it is quite apparent that the acquisition proceedings initiated in terms of Chapter-II lost the legal sanctity due to serious incurable infirmities crept in the inception itself, the judgment obtained in favour of the respondents by playing fraud on the court is actually a nullity and it is non-est in the eye of law. It can be challenged even in collateral proceedings and therefore, the present writ petitions filed, challenging the acquisition proceedings initiated wrongly, deserve to be allowed.

The copy of the Award was not furnished to the petitioners for a long time, as a result, after losing

their valuable lands because of the acquisition proceedings, they could not even make reference under Section 18 of the Act to the Reference Court within the prescribed limitation period. Virtually, the petitioners' right to make reference under Section-18 was so conveniently taken away. Sub-section(1) of Section-12 of the Act postulates that Award made under Section-11 shall be filed in the Collector's Office and the same shall be conclusive evidence as between the Collector and the persons interested, whether or not they have respectively appeared before the Collector, of the true area and value of the land, and the apportionment of the compensation among the persons interested. In the case on hand, although the Award was passed on 30.06.1999 for a pittance sum towards compensation, even during the pendency of the 2nd round of writ proceedings in W.P. Nos.8127 and 8200 of 2000, the petitioners were not furnished with the copy of the Award, however, only after a direction to the authorities, while dismissing the said writ petitions vide common order dated 05.06.2007, to furnish a copy of the Award to the petitioners within a period of two

weeks from the date of receipt of copy of the order with liberty to the petitioners to work out their remedy in accordance with law, the petitioners were able to get the copy and now, they are before this Court.

In view of the fact that there was no Notification authorising any officer much less the Land Acquisition Officer (Coke Oven Project) or the RDO to perform the functions of the Collector beyond the stage of Section 5-A of the Act, the Award passed for pittance sum towards the valuable lands of the petitioners is liable to be set aside for want of delegation of powers, authorising the Special Tahsildar (LA), Coke Oven Plant Project to perform the functions of the Collector. Further, even after a direction, dated 24.12.1996, by the Government not to go ahead with the acquisition proceedings, the indifferent approach of the Land Acquisition Officer in passing the impugned Award is unjustified and unlawful, hence, the same is liable to be set aside on the ground that there is no more requirement of the land and delay in issuance of surrender notice under Section 12 (2) deliberately to

deprive the landowners from making application before the reference court to claim enhanced compensation beyond 6 months from the date of passing of the Award.

4-A. Mr.D.Shivakumaran, learned counsel appearing for the other petitioners-in WP. No.24197 of 2007, treading upon the same line of submissions advanced by Mr.Ayyadurai, reiterated that once the Government themselves decided not to continue with the project and further, when there is no authorization to the authority in respect of the Coke Oven Plan Project to perform the functions of the Collector as provided under the Act, the respondents have no case at all to defeat the claim of the petitioners and so submitting, he pleaded that the present writ petitions may be ordered as prayed for in threshold.

5. A detailed common counter affidavit has been filed by Respondents-1 to 3 and 5. R-4/SISCOL have also filed a common counter affidavit.

6. Mr.V.S.Sethuraman, learned Additional

Advocate General, appearing for R-1 to R-3 and R-5/State, would submit that the Government of Tamil Nadu permitted TIDCO to establish a Pig Iron Plant in Potttaneri and M.Kalipatti Villages to meet the demand of Pig Iron and Billets required by several small scale industries in and around Coimbatore. In fact, during 1990-91, there was acute scarcity for pig iron which is used to manufacture agricultural Implements like Electric Motors, Oil Engines and other such Implements required by the Agriculturists. In the year 1991, TIDCO put up a Steel Plant by name Southern Iron and Steel Company (SISCO) in association with Lakshmi Machine Works and for the Steel Plant work, 522 acres of patta land in Potttaneri and M.Kalipatti Villages was acquired by the Government under Part-II of the Land Acquisition Act treating the acquisition as the one for public purpose. In fact, the land acquisition processes were attended to by two units of Special Revenue Staff and further, required survey staffs were sanctioned for acquiring the above lands. As such, the whole acquisition process commenced in the year 1991. The raw materials required for manufacturing pig iron

and billets being iron ore and industrial coke, the iron ore has to be melted into hot metal for which the industrial coke is necessary. In the beginning, the coke was imported from foreign countries as it was not available in adequate quantity in our country. Initially, the cost of the imported coke was cheaper while compared to the local coke, hence, it was imported from foreign countries, but, day-by-day, the price of the imported coke went up, as a result, the price of the billets had to be increased. In view of the necessity involved, sanction was accorded by the Government for acquiring 154 acres of patta land adjacent to the lands already acquired for the pig iron project. However, some of the adjacent land owners made a request to exclude the built up area and accordingly, their request was also considered.

Adding further, learned Additional Advocate General submitted that while the acquisition proceedings for the coke oven project were ongoing, some of the landowners had raised objections and also approached the Court by filing writ petitions to stop the acquisition proceedings. As a consequence, the coke

oven plant could not be put up in the lands proposed for acquisition, till date. However, this Court, after carefully considering the objections raised by the landowners in the writ petitions, dismissed W.P. Nos. 3861 to 3863, 6613 to 6615 of 1993, etc. Batch by common order dated 12.08.1993 and as against that, W.A. Nos.1258 and 21426 to 21446 of 1993 were filed by one V.Palaniappa Udayar and others, and the Hon'ble Division Bench, after considering similar contentions and arguments as put forth now by the learned counsel for the petitioners to the effect that

since the acquisition was for a public purpose, it was vitiated because no contribution towards compensation payable was made out of public revenue;

that the Notification and Declaration issued under Sections 4(1) and 6 respectively of the Act were not published in accordance with law;

that the provisions contained in Rules 3(b) and 4(b) of the Rules framed under the Act were not followed inasmuch as the objections filed by the objectors viz., the petitioners, were not sent to the company for whose benefit the lands in question are

acquired; and

that notices ought to have been issued to some of the individual petitioners as they are the joint owners of some of the lands,

categorically held that as part of the compensation is paid by the TIDCO which is one of the promoters of SISCOIL and as TIDCO is a Government owned company, the amount paid by it towards compensation satisfies Explanation 2 to Section 6 of the Act; as such, there is compliance with the requirement of the Second Proviso to Section 6(1) of the Act. The said Judgment of the Division Bench is also reported in **1995-1-MLJ 449 (V. Palaniappa Udayar And Ors. vs State Of Tamil Nadu And Ors.)**.

Learned Additional Advocate General, while answering the aspect of fraud as alleged by the learned counsel for the petitioners, would refer to the above said Division Bench Judgment and highlight the observation that SISCOIL is an associate sector company wherein the Government's contribution through TIDCO is 11% of the total equity of the project, therefore, since the acquisition is for a public purpose and part

of the compensation is paid by the State exchequer through TIDCO, the application of procedures contained in Part II of the said Act is perfectly in order. Therefore, the unwanted endeavor of the petitioners in again and again canvassing the issues on which already definite decision was rendered which binds both the parties must be viewed with all seriousness. In order to fortify his stand that the writ petitions are also hit by the principles of res judicata, learned Additional Advocate General referred to the case law reported in **Direct Recruit Class II Engineering Officers' Assn, v. State of Maharashtra (1990-2-SCC-715)**. He pointed out that the petitioners herein unsuccessfully challenged the validity of the Notification under Section 4(1) and the Declaration under Section-6 of the Act in W.P. Nos.6799 to 6801 of 1997 and this Court dismissed the said writ petitions vide common order dated 31.3.1999 (reported in **1999-II-CTC-17 Ayyamuthu, K. V. State of Tamil Nadu**). As against the said decision, the petitioners moved writ appeal Nos.1054, 1055 and 2169 of 1999 and, by Judgment dated 21.3.2005, those writ appeals were dismissed.

The said Judgment is also reported in **2005 (3) CTC 241 (Ayyamuthu v. The State of Tamil Nadu)**. Being aggrieved by the same, the petitioners went upto the Supreme Court by filing SLP (Civil) No.11117 of 2005 which also met the fate of dismissal vide Order dated 13.12.2006 on the ground that there was no reason to interfere with the impugned judgment of the Division Bench of the High Court. However, the Supreme Court observed that the petitioners would be at liberty to seek relief under Section 48 of the Act before the appropriate authority. Once again, the petitioners filed W.P. Nos.8127 and 8200 of 2000 challenging the notice intimating the passing of the Award. The said Writ Petitions were also dismissed as infructuous by this Court vide common order dated 05.06.2007. Again, after losing the second legal battle, now, the petitioners are presently in the third round of litigation on the ground that the respondents failed to communicate the copy of the Award deliberately snatching away the valuable right of the petitioners to make reference under Section-18 to the Reference Court within the prescribed limitation period for enhancement of the

compensation amount and that non-furnishing of the copy of the Award in time has vitiated the entire Land Acquisition proceedings. According to the learned Additional Advocate General, such plea also will not come to the rescue of the petitioners in terms of the decision of the Apex Court in **Poshetty v. State of A.P. (1996-11-SCC 213)**, wherein, it was held that it is not necessary that a copy of the Award should be served since there is no such provision made in the Land Acquisition Act. By forcibly submitting that the present endeavor of the petitioners in pointlessly pursuing the present proceedings on the issues already decided is purely an abuse of process of court and further, there is absolutely no ground or reason to entertain the writ petitions at all since the prayer is hit by the principles of res judicata, learned Additional Advocate General pleaded for dismissal of the writ petitions by imposing exemplary costs.

7. Mr. R.Gandhi, learned Senior Counsel appearing for the 4th respondent, supporting the arguments advanced by the learned Additional Advocate General,

would argue with vigor and force for dismissal of the writ petitions by submitting that virtually this is the third round of litigation unnecessarily initiated by the petitioners without there being any basis for their claim that too after about two decades from the date of the original land acquisition proceedings. According to him, the present writ petitions are nothing but frivolous litigations and no purpose is going to be served by allowing the parties to agitate on the issues which were already dealt with in the previous round of writ proceedings and further, the petitioners' case met the usual ill-fate even before the Supreme Court as per orders passed in SLP (Civil) No.11117 of 2005 on 13.12.2006. The second round of litigation initiated through W.P. Nos.8127 and 8200 of 2000 also ended in dismissal vide common order dated 05.06.2007. Subsequently, possession was handed over in favour of R-4/SISCOL, whereupon, fencing work also got completed and at such crucial stage, dissatisfied with these developments taking place at the instance of R-4 in commencing the project involving public purpose, the petitioners have filed these present writ petitions and

their futile endeavor is nothing but a clear abuse of process of court. With all focus, he added that the canvassing by the petitioners before this Court as to whether acquisition of massive lands made for R-4 was for a public purpose or not has already been concluded against these petitioners by emphatically holding that the acquisition is for public purpose in order to help several foundries in the State and SISCOL would establish an industry which would supply raw material viz., pig iron to all the foundries in the State and that inasmuch as a portion of the compensation is paid from the public revenue, it is not essential to comply with the requirement of Part VII of the said Act. Further, this Court has already held in its decision reported in **1995 (1) MLJ 449** (cited supra) that the chairman of SISCOL is none other than the Principal Secretary to Government, Industries Department. Apart from that, the Declaration under Section 6 of the Act being very clear that SISCOL is an associate sector company formed by the TIDCO with Lakshmi Machine Works Limited as co-promoter to implement the pig iron project, the petitioners in the third round of

litigation cannot take shelter under the word 'company' to portrahit that the applying body is only a private company. The petitioners miserably failed to understand the vital fact that the company has been formed by TIDCO with Lakshmi Machine Works Limited as co-promoter, hence, it is not correct to say that the applying body is only a private company. The actuality is that the acquisition is for setting up of a pig iron project to cater to the needs of the small and medium sized foundries engaged in the manufacture of agriculture implements which are used by common public and further, the promoter of the project being a Government owned company viz., TIDCO, for the development of Industrial activities and employment generation in the State, the application of the procedure under Part II of the said Act is quite in order.

Adding further, learned Senior counsel would submit that the validity of the land acquisition proceedings was decided not once but twice by this Court holding against the petitioners and ultimately, their case ended in failure even before the Supreme

Court as mentioned above and hence, they cannot be allowed to once again agitate upon the settled issues that too in a third round of litigation which is a clear abuse of process of law. It is settled legal position that no writ can be entertained with inordinate delay like in the present case where the petitioners challenge the Award that was passed about 15 years ago. Ultimately, he submitted that the stand of the petitioners that there was change of requisitioning body and hence, the entire acquisition proceedings are liable to be quashed is not a ground at all since as long as the public purpose for which the lands in question are acquired remains the same, the acquisition proceedings would in no way be affected. So submitting, he prayed for dismissal of the writ petitions with costs.

8. In reply, Mr.Ayyadurai, learned counsel for the petitioners in W.P. Nos.23902 and 23903 of 2007 would submit that the principles of res judicata will not apply to the present cases because new issues revolving around fraud at the hands of the Land

Acquisition Officer concerned were not raised in the earlier writ petitions. Similarly, Order-II Rule-2 CPC also will not apply to writ proceedings, hence, writ petitions are legally maintainable more particularly when the purpose for which the acquisition proceedings were initiated stood vanished on account of dissolution of the beneficiary company-SISCOL by orders dated 22.02.2008 of the High Court of Bombay in C.P. No.1222 of 2007. In order to exclude the embargo of the principles of res judicata, he lined up the reasons that the first round of litigation was relating to the validity of the Notification and the Declaration issued under Sections 4(1) and 6 respectively of the Act, that the 2nd round of litigation was aimed at the validity of the notice issued under Section 12(2) of the Act, intimating about passing of the Award and that the third round is aimed at the correctness of the Award passed much belatedly, violating the mandatory provisions of Section 11 of the Act and also on the issue relating to fraud played on this Court at the hands of the Land Acquisition Officer concerned. Finally pointing out that the merger theory also will

not apply to these writ petitions, he again contended that the SLP filed by the petitioners got dismissed at the admission stage without a speaking order, hence, it cannot be construed that the earlier High Court order merged with the dismissal Order passed by the Supreme Court in the SLP.

9. I have given my thoughtful consideration to the rival submissions made on either side and perused the records meticulously.

10. In Tamil Nadu, a number of small foundries are situated and the basic raw materials for all these foundries is pig iron. Since large number of small foundries located in and around Coimbatore were closed for want of this raw material, a body called 'Coimbatore District Small Scale Industries Association (CODISSIA) applied to the first respondent for setting up a pig iron plant. In order to meet the demand of pig iron and billets required by several small scale industries in and around Coimbatore, by appreciating the fact that availability of pig iron and billets were

scarce during 1990-91 and as a result, the small scale industries were not even able to manufacture agricultural implements such as Electric Motors, Oil Engines and other such implements required by the agriculturists, TIDCO, a wholly owned Government Company applied for a licence for production of 1,50,000 tonnes of pig Iron per annum, to the Government of India, Ministry of Industry for approval to set up the Plant in Tamil Nadu. The Board of TIDCO at the meeting held on 21.9.1990 noted that the foundry grade pig iron project is techno-economically viable and resolved to set up the project in joint/associate sector and to select M/s.Lakshmi Machine Works Limited, Coimbatore as co-promoter. In letter (Ms) No. 1232, Industries, dated 13.11.1990, the Government of Tamil Nadu approved the proposal of TIDCO for implementing this project in the 'associate sector' with M/s.Lakshmi Machine Works Limited, as co-promoter. After obtaining approval of the Government, TIDCO and M/s.Lakshmi Machine Works Limited, Coimbatore, entered into an agreement on 12.12.1990 to implement the project. Pursuant thereto, an associate sector company by name

'Southern Iron and Steel Company Limited (SISCOL)' was incorporated on 11.09.1991 and certificate of Incorporation was obtained on 01.11.1991 where Lakshmi Machine Works Ltd., will contribute 40% of the equity and TIDCO 11% of equity and remaining from public/public financial institutions. In this process, at the time of site selection, TIDCO considered the sites at Sevur (near Katpadi) and Arakkonam (near Tamil Nadu Steels Limited) both in North Arcot Ambedkar District, three alternative sites in P.M. Patti Village of Mettur Taluk, Salem District. All these sites were rejected on technical grounds keeping in mind the present phase of the project and its future growth potential with infrastructure facilities like wide area of dry land, power, water and railway-siding facilities at an acceptable project cost to Government of Tamil Nadu and TIDCO. The site at Pottaneri and M. Kalipatti Villages near Mecheri Road Railway Station was finally selected purely on techno-economic grounds. As there are no other suitable poramboke lands in the vicinity suitable for the plant, acquisition proceedings were initiated under the Act. The Government of Tamil Nadu,

accorded administrative sanction in G.O.Ms. No. 92, Industries, dated 9,3.1992. for acquisition of 211.38.5 hectares (522 acres) of patta dry lands in. Pottaneri and M. Kalipatti Villages of Mettur Taluk Salem District for the purpose of setting up the pig iron project by TIDCO with M/s.Lakshmi Machine Works Limited (L.M.W.), Coimbatore. In this background, this Court has to examine as to whether the object behind acquisition of large extent of lands is for a 'public purpose' or not.

With reference to such issue, it must be pointed out that the setting up of the pig iron project would satisfy the pig iron requirements of a number of small foundries in the State. Apart from that, it is also seen that the project guarantees employment to a large number of people employed in the tiny, small and large foundry sectors in Tamil Nadu and the ultimate direct and indirect employment in the foundries would be more than 10,000. From the Declaration under Section-6 of the Act, it is seen that SISCOL is an associate sector company formed by the TIDCO with M/s. Lakshmi Machine Works Limited as co-promoter to

implement the pig iron project. Moreover, the chairman of SISCOOL is none other than the Principal Secretary to Government, Industries Department. In such circumstances, it cannot be said that public purpose is not present in the acquisition proceedings.

11. Now, this Court has to examine as to whether the challenge made by the petitioners, trying to take shelter under the word "Company" is justifiable or not. As highlighted above, the beneficiary company/SISCOOL has been formed by TIDCO with M/s.Lakshmi Machine Works Limited as co-promoter. Therefore, it is not correct to say that SISCOOL is only a private company. The acquisition is for setting up of a pig iron project to cater to the needs of the small and medium sized foundries engaged in the manufacture of agriculture implements which are used by common public. This is a project promoted by a Government owned company viz., TIDCO for the development of Industrial activities and employment generation in the State which will undoubtedly come under 'Public Purpose' as defined in the Act. Formation of the

Company is thus only for the purpose of benefiting several small foundries situated in the State. The TIDCO has got 11 per cent shares in the company, whereas M/s.Lakshmi Machine Works Limited has got 40 per cent and the remaining 40 per cent shares are from the public institutions and public. TIDCO also, towards its share capital, has given a core of rupees. Further, the case of the Government would go to show that the contribution by way of share capital by TIDCO to SISCOIL would be used for paying the compensation to the persons interested in the land acquired under the Notifications and this would amount to payment towards the compensation out of public revenue. In this context, as already indicated by the learned Additional Advocate General and Mr.R.Gandhi, learned Senior Counsel for R-4, it must be pointed out that the same issue has been concisely discussed with clear findings in the previous litigation in the case of **Palaniappa Udaayar v. State of Tamil Nadu** (cited supra) by holding thus:-

"13. The contentions in grounds (a) and (b) of the affidavit are untenable. As stated earlier,

SISCOL is an associate sector company wherein the Government's contribution through TIDCO is 11% of the total equity of the project. TIDCO is a corporation owned and controlled by the State Government within the meaning of Sub-section (cc) of Section 3 of the said Act. TIDCO has not only promoted SISCOL but also taken part by way of equity investment, by getting contribution from the Government, by getting contribution from the Government. Since the acquisition is for a public purpose and part of the compensation is paid by the State exchequer through TIDCO, the application of procedures contained in Part II of the said Act is perfectly in order. Inasmuch as a portion of the compensation is paid from the public revenue, it is not essential to comply with the requirement of Part VII of the said Act because in such a case, the acquisition is not for a company simpliciter but also for a public purpose and the essential condition for acquisition for a public purpose is that the cost of the acquisition should be borne wholly or part out of public funds, which has been fulfilled.

.....

It is the case of the State Government that the contribution by way of share capital by TIDCO to SISCOL would be used for paying the compensation to the persons interested in the land acquired under the impugned notifications and this would amount to payment towards the compensation out of public revenue. On this understanding of the legal position, it was also stated in the notifications as such. In the declaration issued under Section 6 of the Act in G.O.Ms. No. 683, Industries (MIE-I) Department, dated 8.12.1992, it has been specifically stated thus:

No. II(2)/IND/6098/92 - The Government of Tamil Nadu having been satisfied that the lands specified in the Schedule below have to be acquired for a public purpose and it having already been decided that the entire amount of compensation to be awarded for the lands is to be paid out of the funds controlled and managed by the Southern Iron and Steel Company Limited, Coimbatore a company promoted by Tamil Nadu Industrial Development Corporation Limited (a State Government

Undertaking) in the Associate Sector, the following declaration is issued under Section 6 of the Land Acquisition Act, 1894, (Central Act I of 1894) Declaration Under Section 6 of the Land Acquisition Act, 1894 (Central Act I of 1894), the Governor of Tamil Nadu hereby declares that the lands specified in the schedule below and measuring 21.83.0 hectares, which are needed for a public purpose to wit, for establishing a Pig Iron Project in No. 33 Pottaneri Village, Mettur Taluk, Salem District.

Therefore the Government proceeded on the clear and bona fide understanding of the legal position that the acquisition being one for public purpose the compensation has to be paid out of the funds controlled and managed by SISCOL, a company promoted by TIDCO - State undertaking. Learned single Judge has opined that this would satisfy the requirement of Explanation 2 and thereby Second Proviso to Section 6(1) is satisfied. During the course of hearing of this case, learned Advocate General has produced before us G.O.Ms. No. 197, Industries (MIE-I) Department, dated 28.7.1994, issued in connection

with the acquisition in question. It is necessary to reproduce the entire G.O. because it is on the basis of this that the learned Advocate General has tried to sustain the acquisition and it read as follows:

In the G.O. read above (G.O.Ms. No. 92 Industries (MIE I) dated 9.3.1992) the Government have accorded administrative sanction for the acquisition of 21.38.5 hectares (about 522 acres) of lands in M. Kalipattu and Pottaneri Villages in Mettur Taluk of Salem District for the purpose of setting up a Pig Iron Project by Southern Iron and Steel Company Limited (SISCOL) an associate sector co-promoted by Tamil Nadu Industrial Development Corporation Ltd (TIDCO). Pig Iron is an essential raw material for the industries of this State. The setting up of this plant will help in the industrialization of the State and thus in overall economic development. The site has been chosen after careful examination of various alternatives. As the acquisition is for setting up of a Pig Iron Project to cater to the needs of the small and medium sized foundries engaged in the manufacture agricultural

implements which are used by common public, it was proposed to treat the acquisition as for public purpose and, accordingly, ordered to acquire the lands under ordinary provisions, of Part II of Land Acquisition Act.

2. As the lands are required for a public purpose and ordered to be acquired under provisions of Part II of Land Acquisition Act, the Government hereby sanction a token contribution of Rs. 1,000 from public Revenue towards acquisition of the above lands for the setting up of a Pig Iron Project by 'SISCOL'.

What we have pointed out in the earlier portion of this judgment that the State Government bona fide believed in the legal position that contribution of the amount by the TIDCO towards its share capital to SISCOL would be used for payment of compensation to persons interested in the land acquired for the purpose of SISCOL and that would satisfy the requirement of the Second Proviso read with Explanation 2, is further fortified by the aforesaid Government Order. We may also point out here that TIDCO only contributed towards share capital to SISCOL. In

other words, it credited the amount to SISCOL towards its share capital and by so doing, the amount contributed to SISCOL became the fund of SISCOL and as such it changed its original character of public revenue because it becomes the capital of the SISCOL which is a company incorporated under the Companies Act and as such, it is an independent legal person. Therefore, the payment of compensation out of its funds by the SISCOL cannot be held to be the payment out of public revenue in fact.....

..... Therefore, the question arose as to whether the decision as to contribution towards compensation out of the public revenue subsequent to the issuance of the declaration would hold good..... Therefore, the recital in the declaration made under Section 6(1) of the Act in question, that the compensation has to be paid out of the funds of the SISCOL being unnecessary, cannot be construed as coming in the way of the Government make a contribution towards compensation payable out of public revenue, as such a decision can be taken even after the

declaration is issued under Section 6 of the Act by the Government.”

Since the above discussion and clear findings of this Court in the previous proceedings abundantly make it clear that the acquisition was only for public purpose and that the requisitioning body sought to set up foundries for the pig iron project, the repeated arguments on fraud and suppression of material facts pertaining to publication of substance of the Notification under Section 4(1) of the Act are liable to be discarded outrightly as it is hit by the principles of res judicata. It was rather emphatically held that the decision taken subsequent to the declaration issued under Section 6 of the Act, to make contribution of a sum of Rs. 1,000 from out of public revenue towards compensation payable to persons interested in the lands acquired for the purpose of SISCOIL, cannot be held to be a colourable exercise of power. The power has been exercised bona fide is also clear from the introductory portion of the Government Order, G.O.Ms. No. 197, dated 28.7.1994.

12. The other argument advanced by the learned counsel for the petitioners to the effect that after the beneficiary company/SISCOL was dissolved with effect from 01.04.2007, the continuation of acquisition proceedings even after taking over the management of the beneficiary company by another company/JSW would amount to extinction of the purpose for which the acquisition proceedings were initiated, also does not weigh much before this Court as this issue was also concluded against the petitioners by a Division Bench judgment of this Court reported in **2007 (2) CTC 369 (Ramgopal Estates Pvt. Ltd., v. State of Tamil Nadu)** holding that as long as the public purpose for which the impugned lands are acquired remains the same, the change of requisitioning body, as in the instant case, shall not lead to any confusion which would land in miscarriage of justice and avoidable frustration of public purpose. Further, as repeatedly pointed out, when the petitioners had challenged, in the first instance, the Notification and the Declaration under Sections-4(1) and 6 respectively in W.P. Nos.6799 to 6801 of 1997, this Court emphatically held that there

was no error or infirmity in the impugned acquisition proceedings initiated by the respondents and dismissed the writ petitions. The said Order is reported in 1999-II-CTC-17 (cited surpa). As against that, Writ Appeals were filed before this Court and the Hon'ble Division Bench dismissed the same by holding that a party who complains that particular point or points raised and argued had not been considered by Court should file application and point out that such point had not been considered, and without doing so, the said person cannot raise such point in appeal by raising either new or additional point which was not raised before the learned single Judge particularly when that point involved questions of fact. The said decision of the Honourable Division Bench is reported in **2005 (3) CTC 241 (Ayyamuthu v. The State of Tamil Nadu)** and it is apt to extract below the relevant portion therefrom:

"4. It is well settled that the presumption in law is that a Judge deals with all the points which are pressed before him. It often happens that, say, ten points are taken in the memorandum of petition or appeal but only three of those points are pressed before the Judge. Naturally in this situation the Judge will deal with only those three points which were pressed

before him, and the presumption will be that the other seven points were never pressed before him. This is, however, a rebuttable presumption, and if the learned counsel contends that in fact he pressed other points also although they have not been dealt with in the judgment by the learned single Judge, then the party should move an application before the same Judge who delivered the judgment and try to satisfy him that he had in fact pressed that point though it has not been considered in his judgment, vide C. Shanmugham v. Tamil Nadu Housing Board, 2005 (1) CTC 555 in which reliance has been placed on the Supreme Court decisions in Ram Bali v. State of Uttar Pradesh, 2004 (10) SCC 598 and Bhavnagar University v. Palitana Sugar Mills (P) Ltd., and others, 2003 (2) SCC 111."

As the question of allegation of fraud also involves a question of fact, the petitioners cannot canvass the same repeatedly in the third round also since any such course is purely an abuse of process of law. Moreover, the Apex Court, while dismissing the SLP as mentioned above made it clear that the petitioners would be at liberty to seek relief under Section 48 of the Act before the appropriate authority. It means that no more litigation can be made by the petitioners on the validity of the land acquisition proceedings except to

approach the authority with reference to the limited relief under Section-48 of the Act. Thus, a judgment of this Court rendered after hearing on the merits bind the parties till it is set aside in appeal. In this case, when the judgment of this Court upholding the validity of the land acquisition proceedings was confirmed by the Apex Court, now, the petitioners cannot be allowed to once again re-agitate the issues in the third round of litigation, for, the binding character of judgments of courts of competent jurisdiction is in essence a part of the rule of law on which the administration of justice is founded. In the decision reported in 1990-2-SCC-715 (cited supra), it is clearly ruled that an adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had decided as incidental to or essentially connected with subject matter of the litigation and every matter coming into the legitimate purview of the original action both in respect of the matters of claim and defence. Therefore, the present writ petitions are liable to be dismissed

on the ground of res judicata. In view of the dismissal of the writ petitions on the ground of res judicata, it is not necessary to go into the question of merger.

13. Net result, writ petitions stand dismissed, however, there will be no order as to costs. Connected Miscellaneous Petitions stand closed.

17.06.2014.

Index : yes / no.
Internet : yes / no.

Office to Note:-

Issue Order Copy on or before 18.06.2014.
JI.

To

1. The Secretary to Government,
Industries Department, St. George Fort, Chennai-9.
2. The Special Tahsildar (L.A.), Coke Oven Plant Project,
Mettur, Salem District.
3. The Special Tahsildar (L.A.), Pig Iron Plant
Project, Mettur, Salem District.
4. The Revenue Divisional Officer,
Mettur, Salem District.

T.Raja, J.

Pre-Delivery
Common Order in WPs.23902,
23903 & 24197 of 2007.

17.06.2014.