

(2008) 11 MAD CK 0020

In the Madras High Court

Case No : Writ Appeal No. 1741 of 1998

1. E. Velusami, 2. E. Arumugham and 3. E. Manickam

APPELLANT

Vs

The Special Tahsildar (L.A) Neighbourhood Scheme, Salem
and The State of Tamil Nadu

RESPONDENT

Date of Decision : 05-11-2008

Acts Referred:

Land Acquisition Act, 1894 — Section 12, 12(2), 4, 4(1), 5A

Citation : (2008) 11 MAD CK 0020

Hon'ble Judges : S. Tamilvanan, J; Elipe Dharma Rao, J

Bench : Division Bench

**Advocate : P. Jagadeesan, for the Appellant; Balasubramanian, Spl. Govt.
Pleader, for the Respondent**

Judgement

S. Tamilvanan, J.—The writ appeal has been filed against the order, dated 20.11.1997 passed by the Learned Single Judge in W.P. No.

12733 of 1986, wherein the appellants 1 to 3 were the petitioners. It is seen that the writ petition was filed, seeking an order to quash the

Notification issued u/s 4 (1) of the Land Acquisition Act, 1894 (herein after referred to as the Act) dated 04.09.1981 and the declaration u/s 6 of

the Act, dated 03.08.1984 in respect of the land measuring 1.22 acres in S. No. 100/1 of Ayyamperumalpatti Village, Salem Taluk.

2. The main ground raised by the appellants herein is that the names of the owners of the land, as per the Notification u/s 4 (1), declaration u/s 6

and Award u/s 12 of the Act were not shown by the respondents herein, but the name of their father deceased Elumalai was shown as the owner

of the acquired land, hence, the entire land acquisition proceedings have to be quashed. According to the appellant / petitioners, the land

acquisition proceeding initiated by the respondents is against a dead person, hence, the same is void abinitio.

3. The appellants have further contended in the writ appeal that having held in paragraph number 3 of the impugned order that the submission made

by the counsel for the petitioner is acceptable, the learned single Judge, could not have directed the Collector to give notice for passing the order,

instead of quashing the entire proceeding.

4. Mr.P.Jagadeesan, learned counsel appearing for the appellants submitted that the appellants are deprived of their valuable right of taking part in

the enquiry, u/s 5A of the Act and 3 (b) of the Land Acquisition Rules framed thereunder.

5. Per contra, Mr.Balasubramanian, learned Special Government Pleader appearing for the respondents submitted that there is no illegality or

procedural irregularity to set aside the order passed by the respondents. The learned Special Government Pleader further contended that the

petitioners having knowledge about the land acquisition proceeding have belatedly filed the writ petition by raising a plea that the impugned order

has been passed against a dead person and hence, the reasons stated by the appellant / petitioners are not legally sustainable.

6. It is not in dispute in this writ appeal that an extent of 1.22 acres of land in S. No. 100/1 of Ayyamperumalpatti Village,, Salem was a part of

37.30 acres of the land under the acquisition proceedings and Elumalai, father of the appellants was the owner of the said land in dispute. For the

land acquisition proceeding, Notification u/s 4 (1) of the Act was made on 04.09.1981 and published in the Tamil Nadu Government Gazette,

dated 23.09.1981, declaration u/s 6 of the Act was made on 03.08.1984. It is not in dispute that the total extent of land acquired in the village, as

per the counter filed by the first respondent was 37.30 acres and the other land owners had participated in the enquiry proceeding and the award

of compensation for them, reached finality.

7. The learned single Judge, after hearing both sides, held that though the District Collector, who passed the award was not made a party in the

writ petition, directed him to give notice of passing award to the petitioners as well as other persons interested in the land in question, as they were

not personally present nor their representatives present when the award enquiry

was made. As per the impugned order, as soon as the notice of award is given to the appellants and other persons legally interested in the land, it will be open to the appellants and other persons interested to take proceedings, as contemplated under the Land Acquisition Act and disposed of within six weeks thereafter by the District Collector, as contemplated u/s 12 (2) of the Act. With the above observation, the writ petition was dismissed by the learned single Judge.

8. In the writ appeal, the learned counsel appearing for the appellants submitted that the land acquisition proceeding was initiated against their father, a dead person, hence, the same is liable to be set aside. According to the learned counsel, the appellants / petitioners, being owners of the land, they were not given opportunity to raise their defence and on that ground also seeking to allow this writ appeal and to set aside the impugned order and thereby quash the land acquisition proceeding. In support of his contention, the learned counsel for the appellants, cited the following decisions of this Court.

1. M.J.Saravanaperumal vs. State of Tamil Nadu, 1997 (III) CTC 605

2. Muthuswamy vs. The State of Tamil Nadu, 1993(1) MLJ 217

9. As per the averments of the affidavit relating to the writ petition, the appellants / petitioners have stated that their father, Elumalai died, nearly six years prior to the filing of the writ petition, however, they have not specifically stated the date of death of their father, Elumalai for the reasons best known to them. Even the Death Certificate or a certified copy thereon has not been produced to decide the factum whether their father died prior to the date of Notification u/s 4 (1) of the Act or not. It is seen that the writ petition has been filed in the year 1986, though Notification u/s 4 (1) of the Act was made on 04.09.1981. However, the appellants / petitioners have stated in their affidavit that all the objections raised by them were overruled by the first respondent.

10. The affidavit of the writ petition filed by the appellants / petitioners at paragraph (e) of the grounds reads as follows :

The first respondent has not considered all the objections raised by the petitioners and the failure to give reasons for over-ruling their objections also vitiates the enquiry.

11. The averments of the appellants / petitioners would clearly show that the appellants had participated in the enquiry and raised various objections that were not considered by the first respondent herein and further, without proper reasons, according to them, the objections were overruled by the first respondent. In the counter affidavit filed by the first respondent in the writ petition, at paragraph number 3, it is stated that enquiry u/s 5A of the Act was conducted on 08.02.2002, after publication and proper service of notice in the manner prescribed by rules and the objections received during 5A enquiry was sent to the Executive Engineer on 11.02.1982 and the reply received from him was also communicated to the objectors concerned on 30.04.1982 fixing 3(b) enquiry on 07.05.1983, then the land acquisition officer issued his proceedings on 07.05.1983 overruling the objections received. The aforesaid averments of the appellants and the first respondent herein would show that during the enquiry u/s 5A of the Act, the appellants had participated and raised their objections in the year 1982 itself, however, they have not challenged the 4(1) Notification on the ground that the land acquisition proceedings had been initiated against the dead person.

12. The learned Special Government Pleader appearing for the respondents submitted that as per revenue records, the owner of the acquired land was only Elumalai. The appellants / petitioners had not taken steps to change the patta and other entries in the revenue records in their name, on account of the alleged death of Elumalai prior to the date of 4(1) Notification. It is clear that as per patta and other revenue records, relating to the acquired land, the owner was only Elumalai and not the appellants herein. In the counter, the first respondent has stated that there was proper service of notices and also publication in the manner prescribed by rules. The appellants have not disputed the fact that out of 37.30 acres of land acquired in the village, the land in question was to an extent of only 1.22 acres and the other land owners of the village, after receipt of notice appeared before the authorities in the enquiry proceedings. It is not the case of the appellants that they were not residing in the village and further, they had attended the enquiry conducted u/s 5A of the Act in the year 1982 and raised their objections. Learned counsel appearing for the respondents relying on the following decisions submitted that the defence raised by the appellants are not legally sustainable. He relied on the

following decisions:

1. Ramalingam and others, vs. The State of Tamil Nadu, rep. by the Secretary to the Industries Department, 2005 (3) CTC 1 =2005-2-L.W.693.

2. Municipal Council, Ahmednagar vs. Shah Hyder Beig, AIR 2000 SC 671

13. The land in question is only a part of the acquired land of 37.30 acres. The other land owners of the acquired lands in the village had

participated in the proceedings. In such circumstances, it cannot be accepted that the appellants were totally in dark about the land acquisition

proceedings, since in the grounds of the writ petition itself, they have admitted that all the objections raised by them were not properly considered,

but overruled by the first respondent. Therefore, there is no acceptable reason on the part of the appellants for filing the writ petition in the year

1986, nearly 4 years after filing their objections in the 5A enquiry under the Act, on the ground that the Notification u/s 4(1) of the Act was issued

against a dead person. Learned Special Government Pleader further submitted that the compensation awarded, as per the Land Acquisition

Proceeding was already deposited by the respondents.

14. In the decision, Muthuswamy vs. The State of Tamil Nadu, 1993 (1) MLJ 217, this Court has held that in spite of the factual position that the

respondents, authorities were aware of the fact that the original owner of the land had died long before the declaration u/s 6 of the Act and the

declaration was published in the name of the erstwhile owner and hence, on that ground, the impugned order therein was quashed.

15. In the decision, M.J.Saravanaperumal vs. State of Tamil Nadu. 1997 (III) CTC 605, this Court has held that the land acquisition proceedings

are liable to be quashed, on the ground of 4(1) notification issued in the name of dead person. However, we are of the view that the aforesaid

decisions cited by the learned counsel appearing for the appellants are not applicable for the facts and circumstances of this case, since the

appellants though participated in the enquiry had not taken any steps to report the death of their father and change the entries relating to the owner

of the land in the revenue records for number of years.

16. In the decision, Municipal Council, Ahmednagar vs. Shah Hyder Beig, reported in AIR 2000 SC 671, at page number 674, the Hon"ble

Supreme Court has held as follows:

17. In any event, after the award is passed no writ petition can be filed challenging the acquisition notice or against any proceeding thereunder.

This has been the consistent view taken by this Court...

17. In the decision, Ramalingam and others, vs. The State of Tamil Nadu, rep. by the Secretary to the Industries Department, reported in 2005 (3)

CTC 1, this court has held as follows:

3...It has been repeatedly held by the Supreme Court that no writ petition should be entertained after the award under the Land Acquisition Act

has been passed vide Tej Kaur and others v. State of Punjab and others, 2003 (4) SCC 485; Municipal Council, Ahmed Nagar vs. Shah Hyder

Beig, AIR 2000 SC 671; Executive Engineer, Jal Nigam Central Stores Division, Uttar Pradesh vs. Suresh Nand Jayal, 1997 (9) SCC 224; State

of Tamil Nadu vs. L.Krishnan and others, 1996 (1) SCC 250. Following the aforesaid decision, we are of the opinion that the writ petition itself

were not maintainable and they should have been dismissed on this ground itself. Hence, the writ appeals are dismissed...

18. Section 4(1) of the Land Acquisition Act contemplates that whenever it appears to the appropriate Government that land in any locality is in

need or is likely to be needed for any purpose, a Notification to that effect shall be published in the Official Gazette, apart from publication in two

daily newspapers. It is not in dispute that a proceeding under the Land Acquisition Act is initiated with a publication of Notification u/s 4(1) of the

Act. By this, the public are informed about the proposal to acquire the land mentioned therein and that any one dealing with that land would be

doing it at their own risk.

19. As per the decision of the Hon"ble Apex Court, State of Haryana vs. Raghubir Dayal, reported in 1995 (1) SCC 133, a Notification issued

u/s 4 cannot be invalidated for non-compliance with Section 6.

20. u/s 4(1) and 5A of the Act and Land Acquisition Rules, 1923, Rule 3(b), if the objections are not submitted within the prescribed statutory

time limit, that is 30 days from the date of publication of Section 4(1) Notification, the land owners cannot take recourse to the violation of Rule

3(b) of the Rules, as decided by this Court in The Executive Engineer and Administrative Officer, Tamil Nadu Housing Board, Vellore, vs. S.

Govindaraj and others, reported in 2004 (1) MLJ 381 = 2004-1-L.W.43.

21. In *Star Wire (India) Ltd., vs. State of Haryana*, reported in 1996 (11) SCC 698, the Hon''ble Supreme Court has held that writ petition filed

against acquisition proceedings long after the award is passed and the land being vested with the state, is liable to be dismissed on the ground of

delay and latches.

22. Though the appellants were aware of the death of their father, they had not challenged the 4(1) Notification on the ground that it was issued

against a dead person, though they raised their objection in the year 1982, during 5A enquiry, but, the first respondent overruled all their objections

on 07.05.1983. However, the appellants have raised the ground in the writ petition that was filed only in the year 1986. It is an admitted fact that

the date of death of Elumalai, the erstwhile owner of the land was not intimated to the respondents, as per the averments of the pleadings of both

the parties.

23. Even the date of death of Elumalai, father of the appellants/ petitioners is not specifically stated by the appellants in their affidavit, relating to the

writ petition and no supporting document was marked to substantiate the averments of the appellants that their father had died prior to the date of

Notification u/s 4(1) of the Act. When the patta stands in the name of the father of the appellants and he was the owner of the land, as per the

revenue records and in the absence of intimating the death of the owner of the land, the authorities could send notice only to the person, who is the

owner of the acquired land, as per the revenue records. As the death of the land owner was not intimated to the authorities, by the persons

claiming right to the property, there could be no other alternative for the respondents, except to effect substituted service by publication. After

knowing the land acquisition proceeding, as it is only a part of 37.30 acres of the acquired land in the village and having submitted their written

objections in the year 1982, it is not open to the appellants to raise the same as defence by filing the writ petition in the year 1986, stating that the

order was passed against the dead person, even without mentioning the date of death and without producing any support document to that effect,

in order to prove the date of death. It is seen that the appellants are claiming right only through their father. As the appellants had participated in the

enquiry conducted u/s 5A of the Act in 1982, by submitting their objection, it is

not open to them to raise the same as a new defence, by way of filing the writ petition in the year 1986.

24. It is a settled proposition of law that those who seek any relief through court of law, must come with clean hands and they should not suppress any material facts before the court. Similarly, while challenging an order, the parties to the proceedings cannot reserve certain grounds, so as to raise the same subsequently by way of filing writ petition or other legal proceeding. In the instant case, as per the pleadings of the appellants, their father died prior to the date of the Notification u/s 4(1) of the Act. However, the date of death of their father has not been specified by the appellants / writ petitioners for the reasons best known to them.

25. It is an admitted fact that the appellants had knowledge about the land acquisition proceeding on 08.02.2002, on the date of enquiry u/s 5A of the Act, as per their affidavit, they had submitted their objection, that was overruled by the first respondent. However, only in the year 1986, they challenged the 4(1) Notification, by way of filing the writ petition saying that the order was passed against the dead person. Even for reserving the right of a part of the relief, based on a cause of action, as per law, the party must obtain leave from the court, otherwise it will be construed that the unclaimed portion of the relief is given up and subsequently, the same cannot be sought for, by way of filing another suit or writ petition. Similarly, the appellants who had knowledge about the Land Acquisition proceedings, having participated by submitting their objection in the 5A enquiry in the year 1982, cannot raise a new ground in the writ petition in 1986, that the 4(1) Notification issued on 04.09.1981 was against a dead person.

26. Considering the facts and circumstances, the learned single Judge, directed the District Collector, though he was not arrayed as a party in the writ petition, to issue notice to the appellants and other persons legally interested in the land and dispose the same on merits, within the time limit, as contemplated u/s 12(2) of the Act, the same was not availed by the appellants. In such circumstances, we are of the considered view that the appellants are entitled to claim only compensation as that of the other claimants, who contested the land acquisition proceedings. Merely, by raising certain technicalities in the writ petition and writ appeal, belatedly and without substantiating the averments, the appellants / petitioners cannot

succeed in the aforesaid circumstances, hence, the writ appeal fails, accordingly, the same is liable to be dismissed. In the result, the writ appeal is dismissed. However, there is no order as to costs.