

(2003) 03 MAD CK 0223

In the Madras High Court

Case No : Writ Petition No"s. 10153 to 10161 of 1999, W.M.P. No"s. 14439, 14441, 14443, 14445, 14447, 14449, 14451, 14453 and 14455 of 1999 W.V.M.P. No"s. 86 to 94 of 2003

A. Akilabaskar, Mary Roselima, Dr. Kumuthini, K.R.
Muthusamy, Mallika, P. Chinnasamy, N. Jayakumar, D.
Sivashanmugam and O.T. Bhuvaneshwaran

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 28-03-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 03 MAD CK 0223

Hon'ble Judges : E. Padmanabhan, J

Bench : Single Bench

Advocate : R. Thiagarajan, for T.R. Rajaraman, for the Appellant; Rani Selvam, GA, for the Respondent

Final Decision : Allowed

Judgement

E. Padmanabhan, J.—In all the above nine writ petitions, the respective writ petitioners have prayed for the issue of a writ of certiorari calling for the records relating to G.O. Ms. No. 384 Housing and Urban Development Department dated 6.9.96 in issuing Notification u/s 4(1) of The Land Acquisition Act published in Tamil Nadu Government Gazette Part II Sec. 2 (Supplement) dated 23.10.96 and the Declaration u/s 6 of The Land Acquisition Act vide G.O. Ms. No. 397 Housing and Urban Development Department dated 10.11.97 and published in the Tamil Nadu Government Gazette Extraordinary Part II Sec. 2 dated 11.11.97 in respect of the petitioner"s specific plots owned by each of the petitioner and quash the same.

2. According to the petitioners, each one of them purchased house site plot for putting up residential house for their occupation and also developed the plot. It is the contention of the petitioner in each of the writ petition that Section 4(1)

Notification impugned was never published in the locality and the name of the plot owners have not been set out in the Notification as well as Declaration. The lands have been acquired for the purpose of Tamil Nadu Housing Board for construction of houses under the neighbourhood scheme. The petitioners were not aware of the acquisition. The petitioners are the registered owners. During February, 1997 only the petitioners came to know about the impugned notification. The petitioners were called upon to appear for Section 5A enquiry, but actually there was no enquiry. The petitioner and others similarly placed were called upon to state their objections by way of written statement. Rule 4 (b) and (c), which are mandatory have been violated. None of the individual plot owners have been served with the enquiry report submitted by the 2nd respondent to the first respondent. Therefore, the petitioners were under the bona fide impression that the acquisition proceedings have been withdrawn.

3. However, Section 6 Declaration was issued on 10.11.97, but no notice has been served either u/s 9(3) or u/s 10 of The Land Acquisition Act regarding passing of award. The acquisition is invalid, arbitrary and illegal since Section 4(1) Notification is vague, Section 4(1) Notification has not been published in the locality, that the acquisition is not bona fide, and that long prior to Section 4(1) land has been laid out and the petitioners have purchased individual plots. The substance of Section 4(1) Notification was not published in the locality, that there is delay between Section 4(1) Notification and Section 6 Declaration, that 5A enquiry has not been conducted, that Rule 4 has been violated, that there is no reason at all to acquire the petitioners' lands, that they have developed the lands for putting up their own construction and that the impugned acquisition proceedings are liable to be quashed.

4. Per contra, a common counter affidavit has been filed in all the nine writ petitions on behalf of the first respondent. According to the first respondent, 808.87.5 Hectares of land in Kalapatti village were divided under 78 parts was acquired at the instance of the Housing Board. Proceedings were initiated under The Land Acquisition Act for the acquisition of those lands. Notification u/s 4(1) of the Act was approved in G.O. Ms. No. 384 Housing and Urban Development Dept., dated 6.9.96 and published in the Government Gazette dated 23.10.96. The substance of Section 4(1) Notification was published in the dailies "Malai Malar" and "Pir Pagal" on 2.11.96 and in Kalapatti Village on 5.11.96. Enquiry u/s 5A of the Act was conducted by the Special Tahsildar on 13.6.97 after observing the formalities. The objections raised by the land owners and interested persons were communicated to the requisitioning body, who submitted his remarks, which remarks were communicated to the land owners and, thereafter, Section 5A enquiry was conducted. The objections were overruled and the State Government issued a Declaration u/s 6 of the Act in G.O. Ms.397 Housing and Urban Development Dept., dated 10.11.97 and published in Government Gazette dated 11.11.97. The substance of Section 6 Declaration was published in "Pir Pagal" and "Malai Murasu" on 13.11.97 and Kalapatti Village on 16.11.97. At that stage, after lapse of nearly two years, the present batch of writ petitions have

been filed challenging the acquisition of the portions purchased by each one of the writ petitioner in S.F. Nos. 339/1, etc., in Kalapatti village.

5. Section 4(1) Notification was published in the locality by beat of "tom tom" on 5.11.96. It was also affixed in the notice board of the Village Administrative Officer, Kalapatti Town Panchayat, Kalapatti Taluk Office, Coimbatore North, Office of the Revenue Divisional Officer, Coimbatore, Office of the Collector, Coimbatore on 5.11.96. The petitioners, though claim that they have purchased, there has been no mutation of patta in their favour. The writ petitioners have not filed their objections within thirty days from the date of publication of Notification u/s 4(1) of the Act. Therefore, the implementation of Rule 4 (b) and (c) does not arise. Section 6 Declaration was published in the Gazette on 11.11.97, published in two Tamil dailies "Pir Pagal" and "Malai Murasu" on 13.11.97 and in Kalapatti Village on 16.11.97. The ignorance pleaded by the petitioners about the Notification and Declaration cannot be accepted. The petitioners lands are situate at vantage point in Kalapatti neighbourhood scheme and exclusion of the petitioners" lands will affect the comprehensive nature of the layout prepared by the Housing Project.

6. The purpose of the acquisition set out in the notification is not vague. The approval of layout from the Director of Town and Country Planning was secured during 1991 without disclosing the land acquisition proceedings. The petitioners were not served with notice since there has been no mutation in their favour in the revenue records. The Declaration u/s 6 of the Act was published within one year from the date of publication of Notification u/s 4(1) of the Act. The enquiry u/s 5A was conducted after observing usual formalities. The petitioners appeared and submitted their written objections, which were considered. The objections were forwarded to the requisitioning body, who in turn submitted their remarks, which were communicated to land owners, further hearing was conducted and, thereafter, the objections put forth by the petitioners were considered and were overruled. The remarks of the requisitioning body was communicated to the petitioners factually. The Tamil Nadu Housing Board provides funds for the acquisition of lands for Kalapatti neighbourhood scheme and, therefore, the contention to the contra cannot be sustained. It is contended that there are no merits in the writ petitions. It is also contended that the various contentions raised by the petitioners are devoid of merits. It is also pointed out by the learned Government Advocate that acquisition of land for the Housing Board in Kalapatti has already been up held in a number of writ petitions in respect of the very same notification. Further there is delay in filing these writ petitions and on ground of laches these petitions are liable to be rejected summarily.

7. In this batch of writ petitions, the following points arise for consideration :-

"i) Whether the provisions of Section 4(1) has been complied with while issuing a Notification and publishing the same in terms of Section 4(1) of the Act ?

ii) Whether the Declaration issued u/s 6 of the Act is beyond one year period ?

iii) Whether Section 4(1) Notification is vague ?

iv) Whether the failure to set out the names of the petitioner u/s 4(1) Notification vitiates the acquisition proceedings ?

v) Whether Section 5A enquiry conducted is vitiated by non-compliance with the Rules ?"

8. In the Section 4(1) Notification, the purpose of acquisition has been set out as "for a public purpose to wit for the construction of houses under neighbourhood scheme of the Tamil Nadu Housing Board". The purpose being a public purpose and the purpose is neither vague nor it could be stated that the petitioners are unable to understand the purpose of acquisition. The contention that the purpose is vague cannot be sustained in the light of the pronouncement of the Supreme Court in *State of Tamil Nadu v. L. Krishnar*, (1996) 1 SCC 250 : wherein it has been laid down that for each extent of land to be acquired, it is not necessary to specify the use of each bit of land notified. Following the same, this contention is rejected.

9. Taking up the next contention, it is seen that Section 4(1) Notification was published in the Gazette, two Tamil dailies having circulation in the locality, besides publishing in village chavadi, Tahsildar's office, office of the Revenue Divisional Officer, Taluk Office and the Collector's office. This is clear from the respondent's counter. Therefore, the contention that there was no publication of Section 4(1) Notification or substance cannot be sustained.

10. Taking up the next two contentions, admittedly, the petitioners did not file any objection, though there has been a valid publication of Section 4(1) Notification in the locality, in the two tamil dailies as well as in various public offices. The objections raised by various land owners have been considered. On coming to know that the petitioners have purchased the lands, though there has been no mutation in their favour, the petitioners were served with a notice, they submitted their objections, which were forwarded to the requisitioning body, whose remarks were communicated to the petitioners and, thereafter, Section 5A enquiry was conducted. Objections raised by the petitioners were overruled and a report has been submitted to the Government. The State Government considered the report, overruled the objections and, thereafter, issued Section 6 Declaration.

11. Section 6 Declaration was also gazetted, published in two tamil dailies, published in the locality and all places as prescribed by Section 6 of the Act.

12. The petitioners cannot complain that their names do not find place in Section 4(1) Notification as there has been no mutation of patta in their favour. The petitioners have suppressed the issuance of Section 4(1) Notification and Section 6 Declaration, while applying for approval of layout long after the said Notification and Declaration. By suppressing the said notification and declaration, layout approval has been secured. The approval will not in any manner vitiate

the acquisition proceedings, which is for a public purpose.

13. It is further contended by the respondents that the lands of the petitioners are located in the centre of the Kalapatti Neighbourhood Scheme and, therefore, they cannot be excluded from acquisition. It is not as if the lands are in the fringes, but they are located in the centre of the scheme and, therefore, the respondents are right in pointing out that the petitioners' lands cannot be excluded.

14. The next contention being that Section 6 Declaration has been published after a lapse of one year from the date of Section 4(1) Notification. In this case, Section 6 Declaration has been published within one year from the date of publication of the Notification as seen from the date set out supra. Therefore, this contention also fails. It is pointed out by the learned Government Advocate that the acquisition for Kalapatti neighbourhood scheme has already been the subject matter of challenge in various writ petitions and the same has been upheld.

15. In the light of the above discussions this Court holds that all the contentions advanced by the petitioners fail. In the result, all these writ petitions are dismissed. Consequently, connected Writ miscellaneous petitions are also dismissed and W.V.M.P.s are closed. If any of the petitioners have put up construction, and if they are living there, it is open to them to approach the Housing Board for release of the plot in their occupation or for reconveyance subject to usual conditions as per circular of the Housing Board and the respondent Housing Board shall consider and pass orders on such application according to law. The parties shall bear their respective costs.