
(1988) 09 MAD CK 0044
In the Madras High Court

A. Mohammed Yousuf and Others

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 02-09-1988

Acts Referred:

Citation : (1988) 2 MLJ 358

Hon'ble Judges : S.A. Kader, J

Bench : Division Bench

Judgement

S.A. Kader, J.—This writ petition has been filed for the issuance of a Writ to quash the notification issued by the first respondent - State of Tamil Nadu in G.O.Ms. No. 817 Housing and Urban Development dated 31.5.1983 u/s 4(1) of the Land Acquisition Act, hereinafter referred to as the Act, published in Tamil Nadu Gazette dated 22.6.1983 in so far as it related to part of R.S.No. 543/3, Nungambakkam village, Nungambakkam Taluk, Madras District belonging to the petitioner.

2. The first petitioner is the father and petitioners 2 to 8 are his sons and daughters. An extent of 11 grounds and 1202 sq.ft. with a building extending about 21/2 grounds in part of R.S.No. 543/3 in Village Road, Nungambakkam in the city of Madras originally belonged to late Asia Bibi, wife of first petitioner and mother of petitioners 2 to 8. On her death on 1-3-1981 the petitioners became entitled to the same in severality as heirs. The building in the said land is occupied by the petitioners and their families. Out of 11 grounds and 1202 s.ft. the building occupies 2 1/2 grounds and nearly 4 grounds are used for the purpose of ingress and egress from the Village Road and the entire land is, therefore, exempt from the purview of the Land Ceiling Act. The Government of Tamil Nadu published a notification u/s 4(1) of the Act in G.O.Ms. No. 847, Housing dated 31.5.1983 for the acquisition of the petitioners' land and other lands. It is this notification that is challenged in this writ petition on several grounds.

3. The petition is resisted by the respondents and the Joint Secretary to the

Government of Tamil Nadu Urban Housing and Urban Development Department has filed a counter-affidavit. It is admitted that there is an old terraced building in the land of the petitioners sought to be acquired. According to the respondents, the land in question is situate in Village Road, Nungambakkam and suitable for construction of the house for the benefit of the public. The notification issued u/s 4(1) of the Act is not liable to be challenged.

4. A preliminary point is raised by the learned Government Advocate challenging the very maintainability of this writ petition to quash the notification u/s 4(1) of the Act. Reliance is sought to be placed on the following observation of a single Judge of this Court (Mohan, J.) in *N. Krishnappa Mudaliar and Another Vs. The Government of Tamil Nadu and Another*, , where the learned Judge has observed:

It is well settled that Section 4(1) notification is purely preliminary in nature and is administrative in nature and no writ will lie to quash such a notification.

With due difference to the learned Judge I am unable to persuade myself to agree with this view. Are not administrative orders liable to be struck down if they are in violation of any rule of law? Is the preliminary order exempt from the purview of the judicial review even if it is not in accordance with the law? The notification u/s 4(1) of the Act is the sine qua non for further proceedings in acquisition and if the notification is not in accordance with the law, not only the notification but all subsequent proceedings founded on it became invalid. Is not such a notification liable to be challenged in a Court of law? In *Munshi Singh v. Union of India* (1973) 1 S.C.W.R. 195, the notification issued u/s 4(1) of the Act was challenged on the ground of vagueness and indefinite-ness of the public purpose stated in the notification. The learned Judges of the Supreme Court upheld the contention, found that the notification was vague and indefinite and struck down the notification and all further proceedings in pursuance thereof. In the light of the aforesaid decision of the Supreme Court I hold that this writ petition challenging the validity of the impugned notification u/s 4(1) of the Act is maintainable.

5. The first contention advanced by the learned Counsel for the petitioners is that the impugned notification u/s 4(1) of the Act refers only to land and completely ignores the pucca superstructure therein covering an extent of 2 1/2 grounds and the notification is, therefore, invalid. This contention is clearly unsustainable. In *Ghousia Begum Vs. The Union Territory of Pondicherry*, , a Bench of this Court observed:

The fact that the notification is said to have described the property sought to be acquired as only a building site, while as a matter of fact, there were buildings on the land and compensation has been awarded for the same, would not, in our opinion, affect the acquisition proceedings as "land" would include any building standing thereon.

This contention must, therefore, fail.

6. The public purpose mentioned in the impugned notification u/s 4(1) of the Act is

The development of the area by construction of houses by the Tamil Nadu Housing Board.

It is urged by the learned Counsel for the petitioners that the public purpose mentioned in the notification is vague and indefinite and the decision of the Supreme Court in *Munshi Singh v. Union of India* (1973) 1 S.C.W.R. 195, referred to supra is relied on. In the said case a large extent of land in 50 villages was sought to be acquired for "planned development of the area". The Supreme Court pointed out that there was no indication whatsoever whether the development was to be of residential and building sites or of commercial and industrial plots nor was it possible to any one interested in the land sought to be acquired and the development made by the Government or whether the owners of properties would be required to develop a particular area in a specified way. The master-plan which came to be sanctioned on September 4, 1962 was not available for inspection by the persons interested in filing objections. The Supreme Court held, that the mere words "planned development of the area" were wholly insufficient and conveyed no idea as to the specified purposes for which the lands were to be utilised and the notification was, therefore, vague and indefinite. But, in the case on hand, the public purpose mentioned is the development of the area for building purpose and it cannot be said that there is any vagueness or any indefiniteness in those words. This contention cannot also be accepted.

7. The main contention advanced by the learned Counsel for the petitioners is that the public purpose mentioned in the notification, to wit development of the area by construction of the houses is not a real one as the area in question is a well-developed one and 4(1) notification for such an unreal purpose is void in law. The question whether the public purpose mentioned in the notification is really so is always justiciable. The Village Road area in Nungambakkam is undoubtedly a well developed area with posh bungalows and commercial complexes. The extent of 11 grounds and 1202 s.ft. belonging to the petitioners is itself a well developed area with massive bungalow in it in which the petitioners are living. A photograph of this massive two floored structure is also produced for my perusal. This building itself is said to cover 2 1/2 grounds and it is not disputed. An extent of 4 grounds is taken by the passage from the Village Road and the rest of the area is appurtenant to this bungalow. This land which is now sought to be acquired is thus a highly developed one and there is no question of further developing this area. The purpose mentioned in the notification does not appear to be genuine and the notification issued for such a purpose is outside the power of Eminent Domain, as contended by the learned Counsel for the petitioners.

8. The proposed acquisition is for the Tamil Nadu Housing Board for the "development of area by building houses". u/s 40 of the Tamil Nadu Housing

Board Act the Board is empowered to frame and implement any one of the eight schemes mentioned therein and they are:

(1) a house accommodation scheme; (2) a rebuilding scheme; (3) a rehousing or rehabilitation scheme; (4) a city or town or village expansion scheme; (5) a street scheme; (6) a deferred street scheme; (7) a land development scheme; and (8) a general improvement scheme.

The learned Government Advocate has not been able to say which particular scheme is said to be framed and implemented in the land sought to be acquired. It seems that neither the Board nor the Government are clear as to the proposed scheme in respect of these lands. But, as I shall presently show, none of the schemes have any nexus to the public purpose mentioned in the impugned 4 (1) notification viz., "development of the area by building houses by the Tamil Nadu Housing Board". The house accommodation scheme is to meet the need for the house accommodation in any area. This is not the purpose mentioned in the notification nor in the counter filed by the respondents. The notification speaks of the "development of the area" and there is no reference for meeting the needs of house accommodation in the area. Hence the house accommodation scheme has no application. The rebuilding scheme is for reconstruction, alteration or demolition of existing building, the relaying of the sites, enlargement of existing buildings, the relaying of the sites, enlargement of existing roads, streets, lanes etc, in an area which is an insanitary one within the meaning of Section 48 of the Act, that is an area with buildings unfit for human habitation, dangerous to the health of the inhabitants etc. The petitioners' land which is sought to be acquired is not such an area and the rebuilding scheme has no relevance. The re-housing or rehabilitation scheme is intended for persons who are displaced by the execution of any housing or improvement scheme and this is not the case here. The city or town or village expansion scheme providing for the future expansion or development of a city, town or village has also no application. The street scheme is for providing building sites or remedying defective ventilation or creating new or improving existing means of communication and facilities for traffic etc. The deferred scheme is to provide for the ultimate widening of any street by altering the existing alignments. These schemes have also nothing to do with the proposed acquisition. The land development scheme comes somewhat near the purpose of this acquisition for it refers to development. But, this scheme also does not apply. For, the land development scheme is for providing building sites which the Board may lease out or sell by outright sale or on hire purchase basis. There is no provision under this scheme for building houses. This scheme also cannot be pressed into service in the instant case. The last scheme is the general improvement scheme and it comes into effect when in any area any buildings used or intended or likely to be used as dwelling houses are unfit for human habitation, dangerous to the health of the inhabitants, the Board may then frame a general improvement scheme in respect of that area. The object of the proposed acquisition of the petitioners' land is not for any of the schemes which the Housing Board is entitled to frame, formulate and

implement. The acquisition is, therefore, for a purpose which does not fall within any of the schemes which the Board may frame and the notification for such a purpose is a clear colourable exercise of power.

9. For the foregoing reasons I hold that the impugned 4(1) notification is not valid in law and has to be struck down.

10. In the result, the writ petition is allowed and the impugned notification issued by the first respondent State of Tamil Nadu in G.O.Ms.No. 847, Housing and Urban Development dated 31.5.1983 is quashed. No costs., and this case having been posted this day for being mentioned.