

(1984) 07 MAD CK 0031
In the Madras High Court

A. Muthalif

APPELLANT

Vs

The Special Tahsildar, Harijan Welfare and Another

RESPONDENT

Date of Decision : 12-07-1984

Acts Referred:

Citation : (1985) 2 MLJ 237

Judgement

1. This writ appeal is against the order of a single Judge, in W.P. No. 3754 of 1978 dated 31.3.1981.

2. The circumstances under which the writ petition was filed before this Court are as follows:

The Writ Petitioner is the owner of an extent of 0.65 acre of land bearing Survey No. 339/1 in Tirupathur Town, Ramanathapuram District. The

said land was notified in the Tamil Nadu Government Gazette for acquisition for - the provision of house sites to Harijans of 11th ward of

Tirupathur Town u/s 4(1) of the Land Acquisition Act (hereinafter referred to as the Act). During the enquiry u/s 5-A, the petitioner objected to

the acquisition of the said land on the ground that the State Bank of India, Tiruppatur Branch and himself had entered into a contract as early as in

September, 1976 and that consequently the Bank advanced Rs. 90,000/- to the petitioner for the construction of the building as per the plan

furnished by the Bank. The Land Acquisition Officer inspected the land proposed to be acquired and found that after the publication of the Draft

Notification u/s 4(1) of the Act in the Tamil Nadu Government Gazette, the petitioner laid foundation for the office building of the Bank on the

northern portion of the land in S. No. 339/1. The Land Acquisition Officer, proposed therefore, to acquire 0.65 acre out of 1.10 acres in S. No.

339/1 on the southern side. Accordingly, a draft declaration was published u/s 6 of the Act in the Tamil Nadu Government gazette dated

23.8.1978, stating that 0.65 acre out of the land in S. No. 339/1 was needed for the public purpose viz., provision of house sites to the Harijans at

Tirupathur Town. Subsequently, notices under Sections 9(3) and 10 of the Act were published and served in the manner prescribed under the

rules. During the award enquiry, the petitioner reported to the Officer concerned that he had filed a writ petition in this Court praying to quash the

acquisition proceedings and, therefore, requested him to adjourn the enquiry. In fact petitioner prayed the High Court to issue a writ of Mandamus

or any other appropriate writ, restraining the Special Tahsildar, Harijan Welfare, Devakottai Land Acquisition Officer from proceeding further on

the matter in pursuance of the notices issued under Sections 9(3) and 10 of the Act.

3. Before the learned Judge, the following two points were urged by the petitioner.

(1) The Land Acquisition Officer was not certain as to where exactly the extent of 65 cents was got to be measured and carved out of the land

bearing S. No. 339/1 having a total extent, of 1.10 acres.

(2) There was a discrepancy in the description of the land proposed to be acquired between Section 4(1) notification and Section 6 declaration.

The learned Judge found both the grounds of attack not acceptable and therefore, dismissed the writ petition by order dated 31.3.1981. It is

against that order, the present appeal has been preferred.

4. In this appeal, the same two points were urged before us. It is seen that the land is described in Section 6 declaration as:

Ramanathapuram District, Tiruppathur Taluk, No. 57, Tiruppathur Village. Ryotwari, wet S. No. 339-1B belonging to Muthalif, son of Ayyathurai

Ambalam, Tiruppathur town, bounded on the north by S. No. 339-1A east by S.Nos.339-2, South by S. No. 339-3 and west by S. No. 338-

065 acre.

This would suggest that the land is rectangular in shape. But the sketch prepared by the Special Surveyor, Mr. Periakaruppan, on 9.3.1981, which

has been placed before us by the learned Government Pleader shows that the land to be acquired is in "L" shape. In the declaration u/s 6, it is

stated that a plan of the lands is kept in the Office of the Special Tahsildar (Harijan Welfare), Devakottai for inspection at any time during office

hours. The plan now presented is said to be the same as the plan which was kept in the Office of the Special Tahsildar at the time of the

declaration. If it is so the verbal description of the land in the declaration u/s 6 is certainly defective.

The land was described in the notification u/s 4(1) as follows:

Ramanathapuram district, Tirupathur taluk, Nq.57, Tiruppathur village. Ryotwari, wet S. No. 339-1, belonging to Muthalif, son of Ayyathurai

Ambalam, bounded on the north by S. No. 339-6, east by S. No. 339-5 south by S. No. 339 and west by S. No. 338-0.65 acre.

5. It is seen from a comparison of the description of the land in the notification u/s 4(1) and the one given in the declaration u/s 6 that the land is

described as S. No. 339/1 in the notification u/s 4(1), whereas in the declaration u/s 6, it is described as S. No. 339/18. The learned Government

Pleader would state that the land bearing S. No. 339/1 has been divided into two parts which have been described as 1-A and 1-B for the

purpose of identification and that the portion of the land to be acquired was 3397/IB from the beginning. He produced to that effect another sketch

prepared by the said Mr. Periakaruppan, the Special Surveyor, on 9.3.1981 with a mention ""sketch as on the date of 4(1) notification."" In the said

plan, the land shown as to be acquired is in "L" shape as in the sketch referred to above. In the sketch of the village Tiruppathur prepared by the

Special Tahsildar (H.W.), Devakottai on 30.6.1976, the land to be acquired is shown to be located in the northern portion of the land in S. No.

339/1, whereas in the two sketches prepared by the Special Surveyor on 9.3.81, it is shown to be on the southern portion. Therefore, the sketch

prepared on 9.3.1981 by the Special Surveyor, Mr. Peria Karuppan, as giving the description as on the date of Section 4(1) notification is

obviously wrong. Further, during the course of the enquiry u/s 5-A, the appellant herein brought to the notice of the Land Acquisition Officer that

the land proposed to be acquired was the one on which he had agreed to erect a building for the State Bank of India, Tirupattur Branch. In order

to ascertain about the truth over this allegation, the Special Tahsildar, Devakottai wrote a letter to the State Bank of India, Tirupattur on

29.3.1977 and the bank confirmed the existence of the agreement by reply dated 30th March, 1977. Again, the Special Tahsildar wrote a letter to the Bank on 4-4-1977 asking it whether the Bank has any objection to the acquisition of the land for provision of house sites to the houseless Harijans. The Bank replied on 9.4.1977 that the site was actually the one chosen for the building of the bank premises. Later, the writ petitioner wrote to the Special Tahsildar that in pursuance of an agreement with the bank, he had constructed a pucca building on the land under acquisition, which is now in the occupation of the bank. The Special Tahsildar the first respondent herein also in his counter-affidavit conceded the fact that the extent required for the construction of the office building on the southern side was left at the disposal of the petitioner and that the remaining extent viz., 0.65 acres on the southern side alone was taken up for acquisition. In the teeth of his clear admission, it would be futile to contend that there was no shifting in the actual portion of the land to be acquired. Faced with this situation, the learned Government Pleader contended that the notification u/s 4(1) was not final and that only the declaration u/s 6 was conclusive and brought to our notice in support of his contention the following two decisions.

6. The first one is by the Supreme Court in Babu Barkya Thakur Vs. The State of Bombay and Others, wherein their Lordships have held that the

non-mention of the public purpose in Section 4(1) notification does not matter and in this connection, they have observed as follows:

...The purpose of the notification u/s 4 is to carry on a preliminary investigation with a view to finding out after necessary survey and taking of

levels, and, if necessary, digging or boring into the sub-soil whether the land was adapted for the purpose for which it was sought to be acquired. It

is only u/s 6 that a firm declaration has to be made by Government that land with proper description and area so as to be identifiable is needed for

a public purpose or for a Company. That was a mere proposal u/s 4 becomes the subject-matter of a definite proceeding for acquisition under the

Act. Hence it is not correct to say that any defect in the notification u/s 4 is fatal to the validity of the proceedings, particularly when the acquisition

is for a company and the purpose has to be investigated u/s 5-A or Section 40 necessarily after the notification u/s 4 of the Act.

7. The second decision is a Bench decision of this Court reported in B. Sivanandy Vs. P. Bhagavathyamma, . In this decision, after quoting the

observations of the Supreme Court as extracted above, it was held that the vagueness of the Section 4 (1) notification will not vitiate the

proceedings and the fact that the subsequent declaration u/s 6 fixed the area, inclusive of some more grounds in the same survey number, the

property having described as situate in a particular locality, cannot invalidate the prior proceedings.

8. No doubt, when the land is of homogeneous nature, the fact of taking a portion in one side or the other would not make much difference. But

when the land has got specific features, each portion having certain precise advantage to the owner of the land, justice would require that the

portion of the land to be acquired as described as accurately as possible in the notification u/s 4(1) itself. It is true that the final declaration is only

u/s 6. But such a declaration has to be made after considering the report made u/s 5-A, which report consists of the enquiry on the objections

arising out of the notification u/s 4(1). Therefore, the owner of the land should have been put in a position of being able to put forth his case

properly in respect of the portion of the land to be acquired. We are fortified in this view by a recent Bench decision of the Karnataka High Court

reported in Jammada Aivappa Vs. State of Karnataka and Another, wherein it was observed that the declaration u/s 6 of the Act notifying certain

lands, which were not included in the preliminary notification issued u/s 4 was not legal and as such cannot at all be sustained.

9. In the present case, the land proposed to be acquired is situate in a fast developing area near the bus stand and a higher elementary school,

where the building of the office of State Bank of India, Tiruppattur Branch has also come up. Therefore, the land in question can no longer be

considered as a cultivable land out of which a portion or other can be carved out. In fact, it is seen that from the beginning there was a consensus

between the petitioner, the Land Acquisition Officer and the Bank that the land proposed to be acquired was the northern portion upon which the

Bank building was to be erected and was subsequently erected. The writ petitioner while filing his objections u/s 8-A had in mind only that portion

and was not able to put forth his objections in respect of the southern portion now proposed to be acquired. Therefore, it is to be concluded that

there is a serious discrepancy between the descriptions of the land in the notification u/s 4 and the declaration u/s 6, that such a discrepancy has

caused prejudice to the writ petitioner-appellant and has vitiated the acquisition proceedings. It was also found earlier that the description of the

land in the declaration u/s 6 was also not proper. Therefore, both the grounds of attack urged before, us by the appellant are found be justified.

10. In the result, the appeal is allowed. The order of the learned single Judge is set aside. The land acquisition proceedings in respect of the land of

the appellant are hereby quashed. There will be no order as to costs.

11. With reference to Article 134-A of the Constitution the learned Government Pleader prayed that leave may be granted. We are not satisfied

that the proposed appeal to the Supreme Court raises any substantial question of law of general importance which needs to be decided by the

Supreme Court. In the circumstances we refuse to grant leave.