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**(1951) 11 MAD CK 0018**

**In the Madras High Court**

**Case No :** Civil Miscellaneous Petition No. 6457 of 1950

A. Natesa Asari

APPELLANT

Vs

State of Madras and Another

RESPONDENT

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**Date of Decision :** 16-11-1951

**Acts Referred:**

Land Acquisition Act, 1894 — Section 10, 11, 12, 13, 14

**Citation :** AIR 1954 Mad 481 : (1953) 66 LW 999 : (1953) 2 MLJ 684

**Hon'ble Judges :** Rajamannar, C.J.;Venkatarama Aiyar, J

**Bench :** Division Bench

**Advocate :** K. Rajah Aiyar, for V. Ramaswami Aiyar and T.A. Ramaswami Reddi, for the Appellant; A.G., for Govt. Pleader, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Venkatarama Aiyar, J.—We have already held that the acquisitions are for a public purpose and that therefore they are not open to

objection under Article 31(2) of the Constitution. It is now argued Before us that the acquisitions are in contravention of the provisions of the Land

Acquisition Act (I of 1894) and that therefore they are invalid. Two objections have been put forward on this score. One is that the petitioners had

no opportunity to prefer objections u/s 5-A of the Act. To understand the contention of the learned counsel for the petitioners, it is necessary to set

out in brief the scheme of the Act. u/s 4 a preliminary notification is made for the acquisition of the property for any public purpose. u/s 5-A

objections are heard and then the final order is passed u/s 6.

Thereafter notice to all the persons is given u/s 9 and after enquiry is held, an awards passed u/s 16. On the making of an award u/s 16, the

property vests absolutely in the Government. There are two exceptions to this

procedure provided in Section 17. We are concerned only with one of them Section 17(1). That provides that in cases of urgency, the Collector may even before the making of an award, take possession of the property within 15 days of the publication of the notice mentioned in Section 9. The contention of the learned counsel for the petitioners is that the power u/s 17(1) could be invoked only after the stage has been reached when notices are issued u/s 9 which must itself be only after hearing objections u/s 5-A. So far, we agree.

2. It is necessary now to refer to Section 17(4) which is the relevant provision. It runs as follows:

In the case of any land on which, in the opinion of the Provincial Government, the provisions of Sub-section (1) or Sub-section (2) are applicable

the Provincial Government may direct that the provisions of Section 5-A shall not apply, and, if it does so direct, a declaration may be made u/s 6

in respect of the land at any time after the publication of the notification u/s 4 Sub-section (1);

The notice that was issued in this case is in these terms:

Whereas it appears to His Excellency the Governor of Madras that the land specified below is needed for a public purpose, to wit, for

construction of houses, notice to that effect is hereby given to all whom it may concern in accordance with the provisions of Section 4(1) of the

Land Acquisition Act I of 1894." and then the notice proceeds to state: "Under Section 17(4) His Excellency the Governor of Madras directs that

in view of the urgency of the case, the provisions of Section 5-A of the Act shall not apply to the acquisition of the waste or arable lands specified

below.

Therefore as action was taken u/s 17(4), Section 5-A will have no application.

3. But Mr. Rajah Aiyar relies on the fact that Section 17(4) refers to the provisions of Sub-section (1) & argues that by implication it must be

taken that the powers u/s 17(4) could be exercised only after objections are heard u/s 5-A and notices are issued u/s 9. This argument is against

the express language of Sub-section (4) which clearly enacts that the provisions of Section 5-A shall not apply in case of orders under that sub-

section. To adopt the construction contended for by Mr. Rajah Aiyar will be to render Sub-section (4) wholly nugatory. What all is required u/s

17(4) is that the Government must be satisfied that there is such urgency as is contemplated by Section 17(1). If they are so satisfied, they are

entitled to pass an order u/s 17(4) suspending the application of Section 5-A and that is what has been done in this case. Mr. Rajah Aiyar also

suggested that there was no such urgency as would justify involving the powers u/s 17(1) and that there was no inquiry about any such urgency.

We are of opinion that whether an urgency exists or not is a matter solely for the determination of the Government and it is not a matter for judicial

review. This objection is accordingly overruled.

4. The second objection of Mr. Rajah Aiyar is this. He contends that under the scheme of the Land Acquisition Act there are two distinct powers

conferred on the Government for acquiring property, one for a public purpose and the other for a company and that Sections 6 to 37 are

applicable to acquisitions for a public purpose while Sections 38 to 44 forming part of part VII apply to acquisitions for companies. He contends

that the two powers are distinct said alternative. In this case it is not disputed that the Government is acquiring the properties for the benefit of a

house building co-operative society. Co-operative societies are companies within the definition of that term in the Land Acquisition Act and it is

accordingly contended that the Government is bound to proceed only under Part VII relating to Companies and not under Sections 6 to 37. Mr.

Rajah Aiyar argues that the Government ought to have taken action u/s 40 and made enquiries as to the necessity for acquisition and otherwise

satisfied all the requirements of the sections in part VII and that they have not done. What they have done is only to act under Sections 6 to 37 as

in the case of acquisitions for public purposes. This he says is an illegal exercise of the power and therefore the acquisition is invalid.

5. We are unable to agree that there are two distinct alternative and mutually exclusive powers with reference to acquisition of property. Section 4

under which proceedings are commenced only recites that the acquisition should be made for a public purpose. Then we come to the sections

relating to acquisitions of land for companies. Section 40(1)(a) provides that the acquisition might be made for erection of dwelling houses for

workmen employed by the company or for the provision of amenities directly connected therewith. There may be a doubt as to whether this can

be regarded as a public purpose. But the legislature was anxious to confer power on the Government to acquire properties in the case of

companies even in cases coming u/s 49(1)(a). Therefore, in our opinion, the true scope of Section 40 is not to abridge the rights of the Government

to acquire property for public purposes whether it is for a company or not but to enlarge that power so as to enable them to acquire property even

in cases coming u/s 40(1)(a) irrespective of the question whether the purposes are public or not.

6. Reliance was placed by the learned advocate for the petitioner on the language of Section 6 where it is stated that the land may be acquired for

a public purpose or for a company. It is argued that the use of this disjunctive is clear to show that the two purposes are alternative & that

therefore they are mutually exclusive. A similar argument was addressed in the case in -- "Ezra v. Secy. of State", 30 Cal 36 (A). Dealing with this

contention, the learned Judges observed as follows:

If we have fully apprehended the argument on the point, the contention seems to be this: Section 6 provides that "whenever it appears to the Local

Government that any particular land is needed for a public purpose or for a company, a declaration should be made to that effect". The words

"public purpose" and "company" are used disjunctively and if the land is required for a company, it must be so stated without any reference to a

public purpose.

This argument the learned Judges reject as fallacious. A Bench of this Court consisting of Satyanarayana Rao and Raghava Rao JJ. also observed

as follows:

The use of the words "public purpose" and a "company" in the disjunctive in the section does not exclude and is not inconsistent with the view that

the purpose, even in the case of acquisitions for a company, should be a public purpose.

We think that where there is a public purpose, the powers of the Government to acquire land are not excluded because the acquisition is for the

benefit of a company. In fact, we are unable to see any antithesis in two such dissimilar things as ""public purpose"" and ""company"". In our judgment,

the proper construction to be put upon this section is whenever there is a public purpose an acquisition can be made by the Government whether it

is for a company or not. But in case of a company where the acquisition is sought to be made for one of the purposes mentioned in Section 40 that

could validly be done without reference to the question whether it is a public purpose or not. In that view, we do not find that there is any

prohibition in the Act against the Government acquiring lands for a company when there is a public purpose and following the procedure

prescribed in Sections. 6 to 37. In this view this objection also must be overruled.

7. "C. M. P. No. 6457 of 1950:" It is further contended that on the facts of this case the acquisition was not a proper one. It is urged that what is

acquired is land around a rice mill, that it is required for the purpose of extension of the rice mill business and for finding habitations for the

labourers. All these objections have been considered by the appropriate authorities and their decision on these matters is final. We are not satisfied

that the power has been exercised fraudulently or in any mala fide manner. In our opinion therefore there are no grounds for interfering with the

acquisition proceedings and this application is dismissed with costs.

8. In view of the fact that this case involves an interpretation of the Constitution and in particular Article 31(2) thereof, a certificate will issue.