

(2009) 01 MAD CK 0130

In the Madras High Court

Case No : Writ Petition No. 1843 of 2000

A. Sheik Mohammed

APPELLANT

Vs

The District Collector and The Special Tahsildar (ADW)

RESPONDENT

Date of Decision : 21-01-2009

Acts Referred:

Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 — Section 4(1), 4(2), 5A

Citation : (2009) 01 MAD CK 0130

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : V. Bharathidasan, for the Appellant; R. Neelakandtan, GA, for the Respondent

Judgement

K. Chandru, J.—Heard both sides and perused the records filed in this case as well as the original records circulated by the learned

Government Advocate.

2. The petitioner, aggrieved by the acquisition of his land in Survey No. 261/4 to an extent of 0.66 1/2 cents situated at Kodikulam Village,

Avudaiyar Kovil Taluk, Pudukkotai District under the provisions of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978

(for short "T.N. Act 31 of 1978"), has filed the present writ petition.

3. The writ petition was admitted by this Court on 03.2.2000. An interim order against dispossession of the lands from the petitioner was also

granted. The interim order came to be made absolute on 30.12.2002. A counter affidavit has also been filed by the second respondent justifying

the acquisition of the lands for the purpose of providing house sites to the beneficiaries, who admittedly belong to the Arundhadiyar Community of

that village.

4. The second respondent being the prescribed authority initiated proposals for the acquisition of lands for the Harijan Welfare Scheme and the

notice u/s 4(2) was issued and served on the original owner of the lands, who was the vendor and who sold the land to the petitioner. The

petitioner/original owner received the notice on 10.1.1996. An enquiry was conducted on 31.1.1996. The vendor of the land participated in the

enquiry. He gave his objection on 31.1.1996 to the officer concerned. He stated that he has sold a portion of the land in Survey No. 261/4 to the

writ petitioner to the extent of 67 cents even before 2 years and he is in possession of the land only to the extent of 29 cents..

5. The objection given by the said owner was considered by the authority concerned. He sent his proposal dated 29.2.1996 to the District

Collector. The District Collector rejected the objections given by the land owners by his order dated 07.3.1997. Thereafter, a notification u/s 4(1)

was published in the District Government Gazette on 07.3.1997. An Award in No. 6/96-97 has been passed on 27.3.1997 and the compensation

amount has been deposited into the Court.

6. The only contention raised by the petitioner was that he did not get any notice in spite of the fact that his ownership of the land in question was

brought to the notice of the respondents. His advocate gave written objection which was noted by the second respondent in his draft proposals

sent to the District Collector. The District Collector had overruled the objection without giving any findings. The fact of his ownership is also found

reflected in the Award made by the respondents.

7. Before the issues can be decided, it must be stated that this matter was filed at the time when a Full Bench of this Court was called upon to

decide conflicting judgments of this Court on the procedure involved under T.N. Act 31 of 1978. P.K. Misra, J., speaking for the Full Bench

rendered its opinion on 25.8.2006. It has been since reported in 2006 (4) CTC 609 (R. Pari v. The Special Tahsildar (ADW), Devakottai and

Anr.). The Full Bench thereafter directed the individual Writ Petitions to be decided on their merits and in accordance with the direction of the Full

Bench. Thus, the connected matters came to be grouped together and were posted before this Court on being specially ordered by the

Honourable Chief Justice.

8. In the counter affidavit dated "nil" (2000) filed by the second respondent, it was stated that the other land owners' objection made before this

Court was rejected by this Court in W.P. No. 8360 of 1997 and 10383 of 1997 by judgment dated 05.3.1999. With reference to purchase of the

land by the petitioner it was stated that since the revenue records were not altered, notices were given to the original owner. But there is no

reference to the objection given by Mr. Paulraj in the Section 4(2) enquiry.

9. The learned Counsel for the petitioner relied upon the Full Bench judgment of this Court in P.C. Thanikavelu v. The Special Deputy Collector

for Land Acquisition, Madras and Anr. reported in 1989 WLR 89, and reference was made to the following passage found in the Full Bench

judgment, which may be usefully extracted below:

In such cases, if it is brought to the notice of the Collector by the erstwhile land owner or by any other person including the present owner thereof,

of the name of interested persons, the Collector as a statutory functionary cannot decline to afford an opportunity to the person who is really

interested in the land and close to the enquiry. When such information is brought to the notice of the Collector, it is needless to say that the

principles of natural justice enjoin upon him an obligation to issue notice to the person who is found to be really interested in the land even though

his name may not be found entered in the revenue records. It is true that the government has the prerogative to acquire lands belonging to

individuals for a public purpose sanctioned under the theory of "eminent domain". But the rule of law which governs and controls the executive

functions in the thread that runs through the fabric of constitutional democracy. The rule of law behoves the Government to act fairly and

reasonably and the principles of natural justice are the quintessence of such fair play and reasonableness. The decision reported in Padmavathi v.

State of Tamil Nadu 91 LW 80, does not reflect the true statement of law. The Supreme Court has held in Swadeshi Cotton Mills Vs. Union of

India (UOI), , that even in the absence of express reference to observance of principles of natural justice, such principles should be followed

whenever it affects the rights of parties. It cannot be gainsaid that when the lands of an individual are acquired, albeit he may be paid

compensation, his civil rights may be affected. It is therefore elementary that, to be consistent with the principles of natural justice, such a person

should be put on notice before his lands are acquired and his objection heard and considered. The enquiry contemplated u/s 5A of the Act would

be full and complete only when the person who is really interested in the land is put on notice. But, at the same time, it is made clear that individual

notice is mandatory only to those persons whose names are found in the revenue records or who are found by the Collector as persons interested

on information received through reliable source.

10. A perusal of the original file does not show that any attempt was made to serve the petitioner. However, in Survey No. 261/4 out of 0.66 1/2

cents sold to the petitioner, the balance 29 cents are kept with the original owner Paulraj. The total extent acquired in Survey No. 261/4 is only

0.38.5 cents. The original owner had also received compensation. He has no objection to the acquisition. The lands were acquired in the year

1997 and the petitioner had filed the writ petition only during 2000. It is stated in paragraph 4 of the counter affidavit that the lands have been

allotted to the beneficiaries as early as 16.11.1999. Therefore, the lands cannot be reclaimed now. The petitioner by the acquisition may lose at

the maximum only about 0.9 1/2 cents only. For that the District Collector can fix a reasonable compensation.

11. In this regard, reference may be made to the decision of the Supreme Court in Ramniklal N. Bhutta and another Vs. State of Maharashtra and

others, , it is observed as follows:

10. Whatever may have been the practices in the past, a time has come where the courts should keep the larger public interest in mind while

exercising their power of granting stay/injunction. The power under Article 226 is discretionary. It will be exercised only in furtherance of interests

of justice and not merely on the making out of a legal point. And in the matter of land acquisition for public purposes, the interests of justice and the

public interest coalesce. They are very often one and the same. Even in a civil suit, granting of injunction or other similar orders, more particularly

of an interlocutory nature, is equally discretionary. The courts have to weigh the public interest vis-à-vis the private interest while exercising the

power under Article 226 indeed any of their discretionary powers. It may even

be open to the High Court to direct, in case it finds finally that the acquisition was vitiated on account of non-compliance with some legal requirement that the person interested shall also be entitled to a particular amount of damages to be awarded as a lump sum or calculated at a certain percentage of compensation payable. There are many ways of affording appropriate relief and redressing a wrong; quashing the acquisition proceedings is not the only mode of redress. To wit, it is ultimately a matter of balancing the competing interests. Beyond this, it is neither possible nor advisable to say. We hope and trust that these considerations will be duly borne in mind by the courts while dealing with challenges to acquisition proceedings.

(Emphasis Added)

12. This reasoning came to be once again referred and followed by a recent decision of the Supreme Court in *Girias Investment Pvt. Ltd. and Anr.*

v. State of Karnataka and Ors. reported in (2008) 7 SCC 53. In paragraph 20, it was observed as follows:

We are also not unmindful of the fact that though the rights of an individual whose property is sought to be acquired must be scrupulously respected, an acquisition for the benefit of the public at large is not to be lightly quashed and extraordinary reasons must exist for doing so.

13. In the light of the above, the District Collector (first respondent) is hereby directed to negotiate with the first respondent and award appropriate compensation in respect of the land to be taken over for the petitioner. The writ petition is disposed of accordingly. No costs.