
(1991) 08 MAD CK 0065
In the Madras High Court

A. Vembuli Naicker

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 28-08-1991

Acts Referred:

Land Acquisition Act, 1894 — Section 4(i)

Citation : (1992) 1 MLJ 26

Hon'ble Judges : Govindasami, J

Bench : Division Bench

Judgement

Govindasami, J.—The petitioner is the owner of lands of an extent of Order 12 acres comprised in S. No. 14/1B, Order 55 acres comprised in S.No.14/B, Order 56 acres comprised in S. No. 14/3B, Order 50 acres comprised in S. No. 14/4B, 0.06 acres comprised in S. No. 84/2, 0.33 acres comprised in S.No.85/1, 0.30 acres comprised in S. No. 85/2, 0.92 acres comprised in S.No.86/1, 0.67 acres comprised in S.No.86/2, 0.72 acres comprised in S. No. 87/2 in all measuring 4 acres and 73 cents situate in Vanagaram village, Village No. 79, Saidapet Taluk, Chingleput District. The petitioner has utilised the lands for the purpose of manufacturing bricks in the name and style of "Mahavishnu Brick Works" under I.S.I.No.18/03/0604/PMT SSI, dated 14.10.1980.

2. The Government of Tamil Nadu initiated acquisition proceedings under the provisions of the Land Acquisition Act, (hereinafter referred to as the Act) for the purpose of formation of Maduravoyal Neighbourhood scheme and issued notification u/s 4(1) of the Act in G.O.Ms.No.857, Housing and Urban Development, dated 26.8.1985 specifying that the lands specified therein were needed for public purpose to wit for the formation of Maduravoyal Neighbourhood Housing Scheme sponsored by the Tamil Nadu Housing Board and published the said notification in the Tamil Nadu Government Gazette dated 25.9.1985 and also published the said Notification in the local dailies viz., Daily Thanthi and News Today on 30.9.1985. The public notice of the substance of the said Notification was given in the locality by beat of tom-tom on 1.10.1985. The land specified

therein are about an extent of 54.65 acres inclusive of petitioner's lands in Vanagaram village, Saidapet Taluk, Chingleput District. The petitioner raised objection with reference to the said acquisition on 19.11.1985. The Land Acquisition Officer forwarded the said objections to the Requisition Department viz, Tamil Nadu State Housing Board. The Tamil Nadu State Housing Board communicated their views overruling the objections. It is stated that the Land Acquisition-Officer communicated the view of the Tamil Nadu State Housing Board to the petitioner on 13.4.1986 even though the writ petitioner stated that the writ petitioner had not received the views of the State Housing Board. Thereafter, the Land Acquisition Officer conducted an enquiry u/s 5-A of the Act, but it is not stated as to when the Land Acquisition Officer conducted the enquiry. According to the petitioner, the Land Acquisition Officer might have conducted the enquiry even before the views of the requisition department were obtained. Thereafter, the Government on consideration of the report of the Land Acquisition Officer issued a declaration u/s 6 of the Act in G.O.Ms.No.1525, Housing and Urban Development, dated 28.9.1986 and published the same in the Tamil Nadu Government Gazette dated 29.9.1986. It is at this stage, the petitioner has filed the above writ petition for issue of writ of certiorari to quash the notification issued u/s 4 of the Act in G.O.Ms.No.857, Housing and Urban Development Department, dated 26.8.1985 and the declaration issued u/s 6 of the Act in G.O.Ms. No. 1525, Housing and Urban Development Department, dated 28.9.1986 published in the Tamil Nadu Government Gazette dated 25.9.1985 and 29.9.1986 respectively.

3. Mr. S. David Tyagaraj, learned Counsel appearing for the petitioner, contended that the public purpose specified in the Section 4(1) Notification viz., for the formation of Maduravayal Neighbourhood Scheme is vague and indefinite and consequently Section 4(1) Notification has to be quashed. Secondly, the learned Counsel for the petitioner contended that the procedure prescribed under Rule 1 of the Rules framed u/s 55(1) of the Act for giving public notice of the substance of the Notification u/s 4(1) of the Act is mandatory. In the instant case, public notice of the substance of the 4(1) Notification was not given at convenient places in the locality as contemplated under Rule 1 of the Rules framed u/s 55 of the Act, and consequently the acquisition proceedings are vitiated. Thirdly, the procedure prescribed under Rule 3(b) of the Rule for holding an enquiry u/s 5-A of the Act enquiry has not been followed properly. The learned Counsel for the petitioner raised an objection that the Section 6 declaration was published only on 29.9.1986, after expiry of one year from the date of the publication of Section 4(1) Notification in the Government Gazette on 25.9.1985, and on this ground also, the proceedings are liable to be quashed.

4. In reply, the Government Advocate contended that the public purpose specified in the 4(1) Notification is for the formation of Maduravoyal Neighbourhood Scheme sponsored by the Tamil Nadu Housing Board and that cannot be said to be vague, as contended by the learned Counsel for the petitioner. The learned Government Advocate further contended that the public

notice of the substance of the Notification was given in the locality by beat of tom-tom as required under the rules, on 1.10.1985. The learned Government Advocate further contended that the objections raised by the writ petitioner for the proposed acquisition were forwarded to the requisition department and the views of the requisition department on receipt, were communicated to the writ petitioner on 30.4.1986. The learned Government Advocate further contended that Section 6 declaration was published in the Government Gazette on 29.9.1986, which was within one year from the date of the publication of the notification in the locality which was done on 1.10.1985 and consequently the impugned proceedings are not vitiated.

5. In so far as the first contention that the public purpose in Maduravayal Neighbourhood Scheme as specified in the 4(1) Notification is concerned the learned Counsel appearing on behalf of the writ petitioner refers to the decision of a Division Bench of this Court, in *L. Krishnan and Others Vs. State of Tamil Nadu and Others*, wherein this court had occasion to consider the public purpose that was specified in the Section 4(1) Notification which was then under challenge and that public purpose specified in the said notification was as follows:

Whereas it appears to the Government of Tamil Nadu that the lands specified below are needed for a public purpose, to wit, for the implementation of Housing Schemes, to meet the demands made by various sectors of the population under Kalaigiar Karunanidhi Nagar Further Extension Scheme, :-Whereas it appears to the Government of Tamil Nadu that the lands specified below are needed for a public purpose, to wit, for the creation of a new neighbourhood, known as Kalaigiar Karunanidhi Nagar Part II Schemes:

Whereas it appears to the Government of Tamil Nadu that the land specified below are needed for a public purpose to wit, for increasing housing accommodation for the development of South Madras neighbourhood.

The Division Bench considered the decision of another Division Bench of this Court in *The State of Tamil Nadu and Another Vs. A. Mohammed Yousuf and Others*, and also the decision of the Supreme Court reported in *Munshi Singh and Others Vs. Union of India (UOI)*, and ultimately quashed the impugned 4(1) Notification herein on the ground of vagueness. In the instant case, the Section 4(1) of Notification issued by the Government is as follows:

G.O.Ms. No. 857, Housing and Urban Development, 20th August, 1985. No. II (2)/HOU/ 5268/85, Whereas it appears to the Government of Tamil Nadu that the lands specified below are needed for a Neighbourhood Scheme, sponsored by the Tamil Nadu Housing Board, Madras-35 notice to that effect is hereby given to all those to whom it may concern in accordance with the provisions of Sub-Section (i) of Section 4 of the Land Acquisition Act, 1894 (Central Act I of 1894) and the Government of Tamil Nadu hereby authorises the Special Tahsildar (Land Acquisition), Tamil Nadu Housing Board Scheme, Nandanam,, Madras-35 his staff and workmen, to exercise the powers conferred by Sub-Section (2) of Section 4

of the said Act and, u/s 3(c) of the said Act, the Governor of Tamil Nadu hereby appoints the special Tahsildar (Land Acquisition), Tamil Nadu Housing Board Schemes, Nandanam, Madras-35 to perform the functions of a Collector u/s 5-A of the said Act. Chengalpattu District, Saidapet Taluk, Vanagaram village. (The extent given is approximate).

In the instant case also, the Notification does not specify the public purpose with sufficient particulars and clarity. In view of the above contention and following the aforesaid decision of the Division Bench referred to hereinabove, the impugned Notification u/s 4(1) is liable to be quashed.

6. In so far as the second contention that public notice of the substance of the 4(1) Notification was not given in the locality as contemplated under Rule 1 of the Rules framed u/s 55 of the Act. Learned Government Advocate represented that the public notice of the substance of the 4(1) Notification was given in the locality by beat of tom-tom as required under the rules on 1.10.1985. In this context, it is relevant to consider the Rule 1 of the Rules which is as follows:

1. Issue and publication of notice by the Collector - Immediately after the publication of the notification u/s 4(1), the Collector shall issue a notice stating that the land is needed, as the case may be, for a public purpose and requiring all persons interested in the land to lodge before the Collector within thirty days after the issue of the Notification, a statement in writing of their objection, if any, to the proposed acquisition. This notice should be published at convenient places in the said locality, and copies thereof fixed up in the offices of the Collector, the Tahsildar, and in the nearest police station.

The above rule clearly prescribed that the notice should be published at convenient places in the said locality and copies thereof should be fixed up in the offices of the Collector, the Tahsildar, and in the nearest Police Station. It is obligatory on the part of the respondents not only to see that the notice is published in the convenient places in the said locality but also to see that copies thereof are affixed in the offices of the Collector, the Tahsildar and in the nearest Police Station. The learned Counsel for the writ petitioner contended that mere publication of the Notification is not suffice but notice should be published at convenient places in the locality and copies thereof should be fixed up in the offices of the Collector, the Tahsildar and in the nearest Police Station and that is mandatory and failure to do so, vitiates the acquisition proceedings. In this context, the learned Counsel for the petitioner referred to the decision of a Division Bench of this Court in *Valleeswarar temple, Nerkundram* represented by sole trustee *Kasiv-iswanathan v. The State of Tamil Nadu* represented by the Secretary to Government Housing and Urban Development and Anr. (1990)2 M.L.J. 142, in which it was held as under:

Mr. A. Sivaji, learned Counsel for the appellant, covets the quashing of the very notification u/s 4(1) of the Act and for this purpose, he advances the point that as enjoined by Section 4(1) of the Act and Rule 1 of the Tamil Nadu Rules under

the Act, there was no publication of the substance of the notification u/s 4(1) of the Act, point to the above effect has been taken in the affidavit filed in support of the writ petition. But, this point has not been adjudicated upon by the learned single Judge. That the provisions of Section 4(1) of the Act and Rule 1 of the Tamil Nadu Rules under the Act with regard to publication of the substance of the notification u/s 4(1) of the Act, are mandatory in nature and non-compliance with them will vitiate the entire acquisition proceedings, is a proposition well settled, which cannot permit any disputation. The respondents have not cared to file any counter affidavit rebutting the above contention of the appellant, based on violation of the mandatory provisions of law, either during the pendency of the writ petition or during the pendency of the writ appeal. Mr. K. Ravi Rajapandian, learned Additional Government Pleader (Writs), is also not in a position to put forth any voice of rebuttal supported by records in the course of his submissions, over this aspect. The result is, here we find a case where the mandate of law has been breached and the appellant must have the relief of quashing the Notification u/s 4(1) of the Act as coveted through its learned Counsel.

It is clear from the above decision that the procedure prescribed under Rule (1) of its rules framed u/s 55 of the Act for giving public notice of the substance of the 4(1) Notification is mandatory and failure to follow the procedure will vitiate the entire proceedings. In the instant case, except the averments that public notice of the substance of the notification u/s 4(1) of the Act publication was given in the locality by beat of tom-tom under rules on 1.10.1985, there is nothing on record to show that the respondent has followed the prescribed procedure for giving public notice of the substance of the Notification in the locality viz., publication of the notice at convenient places in the said locality, and affixing copies thereof in the offices of the Collector, the Tahsildar, and in the nearest Police Station. Having regard to the aforesaid peculiar circumstances of the case, the impugned proceedings are liable to be quashed.

7. That apart, the contention of the learned Counsel for the petitioner is to the effect that the procedure prescribed in Rule 3(b) of the Rules has not been followed in the present case while holding enquiry u/s 5-A of the Act and that the petitioner had not received the views of the requisition department. But according to the learned Government Advocate, the views of the requisition department were communicated to the petitioner, vide RC/58/4 dated 30.4.1986. The learned Counsel for the petitioner disputes about the factum of the receipt of the views by the writ petitioner. The learned Government Advocate is not in a position to substantiate his plea that the views of the requisition department were communicated to the petitioner as alleged in the counter-affidavit. On this ground also, the proceedings are liable to be quashed.

8. With reference to the contention that the publication of the declaration u/s 6 of the Act was made beyond a period of one year from the date of publication of the Section 4(1) Notification. In the instant case, though the Section 4(1)

Notification was published on 25.9.1985, the publication of declaration u/s 6 of the Act was made only on 29.9.1986 admittedly beyond a period of one year. The learned Counsel for the petitioner contended, that in view of the fact that the due publication of the substance of the notification was not published as contemplated as per Rule 1 of the Rules framed u/s 55 of the Act, the period of one year for publication of the declaration u/s 6 of the Act, should be computed from the date of publication of the Section 4(1) Notification in the Government Gazette. Since the declaration u/s 6 of the Act was published beyond the period of one year from the date of the publication of Section 4(1) Notification in the instant case, the proceedings in so far as its relates to the petitioner's lands are concerned are vitiated.

9. For all the above said reasons, the impugned acquisition proceedings are liable to be quashed and accordingly they are quashed as prayed for. The writ petition is allowed. Rule Nisi is discharged. No costs.