
(2007) 08 MAD CK 0068

In the Madras High Court

Case No : Writ Appeal No's. 711 of 2001

Alifullah and A.J.P. Ibrahim

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 23-08-2007

Acts Referred:

Land Acquisition Act, 1894 — Section 11A, 12(2), 4(1), 6, 7

Citation : (2007) 4 LW 736

Hon'ble Judges : S.J. Mukhopadhaya, J;S. Tamilvanan, J

Bench : Division Bench

Advocate : V. Raghavachari, for the Appellant; D. Sreenivasan, AGP for R1, for the Respondent

Final Decision : Dismissed

Judgement

S. Tamilvanan, J.—W.A. No. 711 of 2001 has been preferred by the appellants / petitioners against the order, dated 30.10.2000, made in

W.P. No. 3499 of 2000. W.A. No. 2137 of 2002 has been preferred by the same appellants / petitioners, against the order, dated 03.06.2002,

made in W.P. No. 6530 of 1994. In both the writ appeals, the appellants and respondents 1 and 2 are one and the same, though respondents 3 to

12 in W.A. No. 2137 of 2002 are individuals, claiming rights as allottees of house sites by the state.

2. In W.P. No. 3499 of 2000, the appellants / petitioners have challenged the Award No. 7/93-94, dated 28.03.1994, passed by the respondents

1 and 2, on the ground that no notice was served on them and no prior approval from the District Collector was obtained from the Land

Acquisition Officer before passing the award. It is seen from the records that the award was passed as early as 28.03.1994 and the same was also

known to the appellants herein, as per the counter filed in the earlier writ petition and that there is no dispute with regard to the said facts. As per

the finding of the learned single Judge, it is an admitted fact that the petitioners have filed the said writ petition in 2000, 5 years after the order was

passed and there was no explanation for the delay of five years, though the petitioners have stated that they came to know about the land

acquisition proceedings and award only on a later date. The learned single Judge, in the impugned order in W.P. No. 3499 of 2000 has observed

as follows in paragraph number 3 of the order now under challenge:

Learned Counsel has submitted that the award was passed without any notice, but on the basis of the records. Learned Government Advocate has

submitted that though notices were served, the petitioners have not appeared for the enquiry. Though the petitioners contention that no prior

approval was obtained from the concerned authority is sustainable, I am not inclined to interfere with the award, as the petitioners have come

forward with the above writ petition after five years without any proper explanation.

3. According to the appellants / petitioners, they had purchased the land on 12.01.1989 in Survey No. 121/5 with an extent of 4 acres and 40

cents at Sakkarai Kottai Village and spent a huge amount for putting up barbed fence and for making irrigation facilities and they also dug a well

and also planted coconut sapplings. They have further contended that the land was acquired, despite the fact that the land purchased by them at

Bharathi Nagar was already acquired by the first respondent for the purpose of allotment of house sites, though alternative sites were available and

that the appellants had no other land, except the land that was sought to be acquired. It is seen from the finding of the learned single Judge that the

respondents 1 and 2 have denied the averments of the appellants with reference to raising of coconut plantations, spending huge amount for other

developments of the land as untrue. In the writ appeal, the appellants have stated that the award, dated 28.03.1994 was not served on the

appellants and therefore, there is no latches on the part of the appellants in challenging the award passed by the second respondent herein. They

also contended that the second respondent has not obtained prior approval from the competent authorities and that the procedures as

contemplated under the Central Act was not followed in passing the award.

4. While the case was taken for hearing, Mr. V. Raghavachari, learned Counsel appearing for the appellants vehemently argued on the following

three points:

1. The award of the second respondent, dated 28.03.1994 was not served on the appellants and therefore, there is no latches on the part of the

appellants, as found by the learned single Judge.

2. The award is bad in law, because the respondent has not obtained prior approval.

3. Though, as per Section 4 (1) of the Land Acquisition Act, notification should be effected by publishing the same in the official gazette and in two

daily newspapers, in circulation of the locality of which, one should be in the regional language.

5. According to the learned Counsel, the publication for the land acquisition proceedings was made on 11.02.1994 in Kumari Murasu, Tamil

Daily, though the said Tamil Daily was not in circulation in the locality, where the acquired lands situate.

6. The learned Counsel for the appellants in support of his contention cited the following decisions:

1. Smt. Bailamma @ Doddabailamma (Dead) and Others Vs. Poornaprajna House Building Co-operative Society and Others,

2. State of U.P. and Others Vs. Rajiv Gupta and Another, .

7. As per the decision Smt. Bailamma @ Doddabailamma (Dead) and Others Vs. Poornaprajna House Building Co-operative Society and

Others, , the Hon"ble Supreme Court has ruled that as per Section 11-A of the Land Acquisition Act, 1894, limitation period of two years has

been stipulated for making the award mandatory.

8. According to the respondents 1 and 2, as per their counter, all the legal formalities under the Land Acquisition Act have been complied with. It

is not in dispute that Section 4 (1) Notification was issued on 07.01.1993 and enquiry was conducted on 08.04.1993, as per Land Acquisition

Act. As per the finding of the learned single Judge, though, notice was served to the appellants / petitioners, they did not appear for the enquiry. It

has been held that the objection raised that the lands had been purchased for raising coconut plantations and spent huge amount for development

of the land as untrue by the Special Tahsildar, after considering the objections raised by the appellants. It is seen that declaration u/s 6 was issued

on 01.02.1994 and the same was approved by the Government, u/s 7 of the Land Acquisition Act on 09.03.1994, after observing all legal

formalities. As the appellants did not appear for the enquiry and also to receive compensation, the amount was kept in revenue deposit in their

favour in the Sub Treasury, Ramanathapuram and possession of land was taken over on 29.03.1994. According to the respondents 1 and 2, lay

out plans were approved and house sites pattas were issued to Adi Dravidars of Anna Nagar of Sakkarai Kottai Village on 31.03.1994.

9. Based on the evidence available on record, the learned single Judge has held that coconut seedlings were planted only subsequent to the

Notification issued u/s 4 (1) of the Land Acquisition Act and that it was only an attempt to avoid the land acquisition proceedings. An Advocate

Commissioner was also appointed to find out whether the possession was taken over by the authorities, pursuant to the land acquisition

proceedings. The learned single Judge, considering the evidence available on record, has held that the above said arguments advanced on behalf of

the appellants / petitioners were extraneous for the purpose of disposal of the writ petition and accordingly, both the writ petitions were dismissed

on Merits.

10. In the writ appeals, Mr. V. Raghavachari, learned Counsel appearing for the appellants would contend that u/s 6, Declaration as per Land

Acquisition Act, it was published in Madurai Murasu, Tamil Daily, dated 28.01.1993. According to the learned Counsel, the said Tamil Daily is

not in circulation at the area, where the acquired lands situated. It is quite clear that in the writ appeal, this Court cannot go into the question of fact

that was decided, based on evidence and as such, we are of the considered view that the question whether the newspaper has wide circulation or

limited circulation cannot be disputed in the writ appeal. It is seen that after the land acquisition proceedings, layout was prepared by the authorities

and approved for house site and subsequently, the sites were allotted to various persons, as per the scheme of the State Government.

11. Mr. V. Raghavachari, learned Counsel appearing for the appellants contended that the award, dated 28.03.1994, passed by the second

respondent was not served on the appellants and therefore, there is no latches in challenging the said award. He has further contended that the

award is bad in law, because the second respondent has not obtained prior approval. In support of his contention, the learned Counsel cited the

decision State of U.P. and Others Vs. Rajiv Gupta and Another, , wherein the Hon"ble Supreme Court has held as follows:

5. Its bare reading indicates and emphasises the limitation within which the award, should be made and has been statutorily determined, namely, the

Collector shall make an award within a period of two years from the date of the publication of the declaration. It is common knowledge that after

declaration was published, years used to roll by to make the award and the owners of the lands were put to great hardship. Parliament intended to

relieve the owners of the lands from this hardship and pegging of the price prevailing as on date of publication of Section 4 (1) notification. It is,

therefore, a mandatory duty cast on the Land Acquisition Collector to make the award strictly in accordance with the limitation u/s 11-A. If no

award is made within that period, the entire proceedings for the acquisition of the land shall lapse. In other words, on expiry of two years from the

date of the publication of the declaration unless the proviso is attracted, if no award is made in the meantime, in the eye of law the proceedings

initiated u/s 4 (1) of the Act culminated in the declaration made u/s 6 shall stand lapsed and no proceedings, in the eye of law thereafter do exist, to

take further action.

12. In the instant case, it cannot be construed that the Land Acquisition Proceeding was affected in view of Section 11-A of the Land Acquisition

Act, 1894 on the facts discussed earlier. The appellants have challenged the award, dated 28.03.1994, on the ground that no notice was served

on the appellants, as contemplated u/s 9 (3) and 12 (2) of the Act. But the learned single Judge has given a clear finding with regard to the same

and that the award was passed as early as 28.03.1994. In this regard, the learned single Judge has observed as follows in the impugned order,

dated 31.10.2000, passed in W.P. No. 3499 of 2000:

The petitioner filed the above writ petition, challenging the Award No. 7/93-94, dated 28.03.1994 on the basis that no notice was served and no

prior approval from the Collector was obtained by the Land acquisition Officer

before passing the award. It is not in dispute that the award was passed as early as 28.03.1994. This fact was known by the petitioner from the counter filed in the earlier writ petition. There is no dispute about the fact. Earlier counter was filed even according to the learned Counsel in 1995, but the petitioner has filed the above writ petition in 2000, after five years. There is no averment in this writ petition as to why the petitioners have come forward with the writ petition after five years, though the petitioners came to know about the fact that the award was passed.

13. Considering the arguments advanced both the learned Counsel and on a careful perusal of the material papers available on record, we are of the considered view that the aforesaid finding of the learned single Judge is no way perverse or against law, so as to interfere with the same in the writ appeals.

14. In the result, both the writ appeals in W.A. No. 711 of 2001 and 2137 of 2002 fail and accordingly, they were dismissed. However, there is no order as to costs.