

(2001) 11 MAD CK 0078

In the Madras High Court

Case No : Writ Petition No's. 1201 to 1208 of 1997 and W.M.P. No's. 2021, 2023, 2025, 2027, 2029, 2031, 2033 and 2035 of 1977

Arumugha Mudaliar

APPELLANT

Vs

The State of Tamil Nadu and Another

RESPONDENT

Date of Decision : 16-11-2001

Acts Referred:

Land Acquisition Act, 1894 — Section 10(3), 11, 4(1), 5, 5A
Land Acquisition Rules — Rule 3

Citation : (2002) 1 MLJ 459

Hon'ble Judges : F.M. Ibrahim Kalifulla, J

Bench : Single Bench

Advocate : R. Krishnamoorthy for V. Ayyadurai, for the Appellant; M. Mahalingam, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

1. The writ petitioners are aggrieved against the issuance of 4(1) notification made in G.O.Ms. No. 650 Housing and Urban Development (L.A.III) dated 22.9.1992 published in the Tamil Nadu Government Gazette dated 21.10.1992 and the declaration made u/s 6 of the Act. In G.O.Ms. No. 939, Housing and Urban Development, dated 15.11.1993 published in Tamil Nadu Government Gazette, dated 18.11.1993 in respect of the lands of the petitioners situated in S. No. 223/2 and 222/2 Vilankurichi Village, Coimbatore, North Taluk, Coimbatore District.

2. According to the petitioners, the lands in question in S. No. 223/2 and 222/2 to an extent of 1.93.0 Hectares concerned in W.P. Nos. 1201 to 1208 of 1997 filed by the heirs of Krishna Gounder and Kuttiammal and after her death on 31.1.2000. Succeeded by her legal representatives, out of the total extent of 10.24.0 Hectares sought to be acquired for the purpose of Ganapathy Neighbourhood Scheme, originally belonged to one Thiru Krishna Gounder who died on 24.9.1988, that the petitioners in W.P. Nos. 1202, 1205, 1206, 1207 and

1208 of 1997 were the legal representatives of the said Krishna Gounder, while the petitioners in W.P. Nos. 1201, 1203 and 1204 are the purchasers of the lands in question from the original owners. It is stated that a recognised Private School providing education up to V Standard is being run in part of the said lands. It is claimed that during a preliminary survey conducted by the authorities, the factum of ownership of the petitioners and the running of the school was made known to the concerned Land Acquisition Officer who also recommended for deletion of these lands in view of the existence of the school and also the location of the property in a fringe area as such the exclusion would not affect the purpose of the acquisition.

3. The 4(1) Notification was dated 22.9.1992. It is not in dispute that the publication of it was made in the newspapers called "Makkal Kural" and "Pirpagal" dated 22.10.1992. It is also not in dispute that the 4(1) Notification was issued in the name of the original owner i.e Krishna Gounder who died as early as on 24.9.1988. When the enquiry u/s 5 of the Act was held on 4.6.1993, it is stated that the present petition in W.P. No. 1208 of 1997 filed objections for himself, as well as power of agent of the writ petitioners. The report u/s 5(A) was dated 25.5.1993. Thereafter Section 6 declaration came to be made on 15.11.1993 which was published in the locality on 23.11.1993. Ultimately, the award came to be passed on 10.11.1995.

4. The writ petitioners, apart from various challenges made in the affidavit filed in support of the respective writ petition, also raised certain additional grounds in W.M.P. Nos. 22328 to 22332 of 2001.

5. In the above stated back ground, Sri. R. Krishna Moorthy, learned senior counsel appearing for the writ petitioners would contend that Section 4(1) Notification is liable to be set aside, inasmuch as, the Notification came to be issued in the name of a dead person, that the publication was not in accordance with the provisions of the Act that no publication in the locality was made and the non-service of notice on the petitioners and in the name of the petitioners inspite of knowledge of their ownership at the time of conduct of preliminary survey would also vitiate the proceedings. The learned senior counsel would then contend that even the 5(A) enquiry was not conducted in accordance with the provisions of the Act, inasmuch as, the various objections raised through the power agent of the writ petitioners namely, the petitioner in W.P. Nos. 1208 of 1997 were not duly forwarded to the requisitioning body and the remarks of the requisitioning body were not furnished to the petitioner or to the power agent before the submission of the report u/s 5(A), dated 25.5.1993. The learned Senior Counsel would further contend that the said infirmity was in violation of Rule 3(b) of the Land Acquisition Rules which is mandatory. He would contend that in view of the said violation of mandatory Rule 3(b), the subsequent declaration u/s 6 would also fall to the ground. It is further contended that the ultimate award which is stated to have been passed on 20.11.1995 was also not passed in accordance with law, inasmuch as, inspite of the fact that Section 6

declaration came to be issued in the name of all the writ petitioners, no notice was served on the writ petitioners prior to the passing of the award, thereby violating the Sections 9 and 10(3) of the Act.

6. It is relevant to mention that no counter affidavit has been filed in any of the above writ petitions. The learned Government Pleader only produced a proforma containing certain particulars signed by the second respondent herein. In the said proforma at serial No. 9 relating to locality publication, it is claimed that the same was made on 27.11.1992, at Serial No. 10, relating to Form No. 3 Notice, it is left blank at serial No. 11 and 12 relating to 5A notice date and service of 5A Notice respectively, again it is left blank at serial No. 13, relating to date of enquiry and order, it is mentioned as 4.5.1993. As regards Serial No. 18 to 22 relating to Section 9(1) Notice, 9(3) Notice, date of service, persons to whom the notice to be served and the date of enquiry, the respective serial numbers have been left blank. Only other detail given is the award number and the date, as well as, the award amount.

7. Therefore, it is not in controversy that the respondents failed to issue necessary notice to the writ petitioners subsequent to Section 6 declaration and the passing of the award, thereby confirming the position that the award came to be passed without service of proper notice on the petitioners. Whose ownership was not in dispute by virtue of the fact that Section 6 declaration came to be made in the names of all the writ petitioners as disclosed by the Gazette Notification itself. Therefore, to that extent, it cannot be held that a valid award came to be passed as to hold that no interference could be made after that.

8. That being the position, as regards the violation of mandatory Rule 3(b) as pointed out by the learned Senior counsel for the writ petitioners, it is not satisfactorily shown as to how the said stand of the writ petitioners cannot be sustained. As stated by me earlier, there are no details or information as to whether the objections raised on behalf of the petitioners was forwarded to the requisitioning body and whether any remark at all was received from them which was furnished to the writ petitioners who are undoubtedly the owners of the lands which were sought to be acquired. In such circumstances, when the said violation strikes at the root of the 5(A) enquiry, it will have to be held that the proceedings at the stage of 5(A) enquiry cannot also be sustained. Consequently, the declaration made u/s 6 of the Act should also fall to the grounds.

9. When we come to the violation pointed out with regard to the issuance of the notification u/s 4(1), it is not in dispute that Section 4(1) Notification came to be issued in the name of a deed person on 22.9.1992. The original owner Krishna Gounder is stated to have expired on 24.9.1988 and the said information is stated to have been made known to the Authorities concerned at the time when a preliminary recovery was conducted. A specific averment has been made to the effect that the Land Acquisition Officer, pursuant to the preliminary survey conducted was apprised about the existence of the school and the location of the lands in question and that he also recommended for exclusion of the lands in

question. The fact that in declaration made u/s 6 of the Act the names of the petitioners have been duly mentioned also confirms the said stand of the petitioners. On the above said basis, it will have to be held that the second respondent was fully aware of the ownership of the petitioners in respect of the lands sought to be acquired. Therefore, inspite of such knowledge of ownership of the lands by the petitioners, in the absence of any acceptable reasons in the form of affidavit or any other material, it will have to be held that the issuance of the notice in the name of a dead person by itself would vitiate the said Notification.

10. That apart, the infirmity pointed out on behalf of the petitioners on the matter of publication of the Notification in the local dailies also merits acceptance inasmuch as, no material was placed before the court as to how of the two news papers, one called "Pirpagal" was widely circulated in the locality in question. Therefore, that would also seriously impinge upon the sustainability of the Notification issued u/s 4(1) of the Act.

11. Sri. R. Krishan Moorthy, learned senior counsel also brought to my notice the recent decision of the Division Bench of this Court rendered in W.A. Nos. 1534 and 1536 of 2001 etc., dated 8.11.2001 holding that as regards the publication to be made in the newspapers while one should be in the regional language, the other should be in English Daily and failure to effect such publication would render the notification itself invalid. I find force in the submission of the learned counsel, especially in a case of this nature, where right from the beginning, the claim was that school was being run in there land in question, catering to the needs of the local public, it was imperative that the publication in the newspapers, as well as, in the locality publication was made in an effective manner or otherwise it would seriously effect the purport and intent of such publication which was meant specifically for bringing to the notice of the local people in order to come forward with their say with record to the acquisition sought to be made. Therefore, on this ground as well, the Notification issued u/s 4(1) definitely calls for interference.

12. The learned senior counsel also relied upon the Judgment reported in Miss. Asiya Mariyan Vs. The Secretary to Government of Tamil Nadu. Adi- Dravidar and Tribal Welfare Department, Fort St. George, Madras and another, , in support of his contentions that non-issuance of proper notice to the legal heirs vitiate the notification issued u/s 4(1) of the Act. In the said judgment, the learned Judge has specifically dealt with the requirement of furnishing the details regarding the ownership, extent, survey numbers etc., in clear terms in all the notification and failure of which would render the notifications in valid. I am in full agreement with the preposition laid down by the learned Judge and applying the same to the facts of this case, it will have to be held that the Notification u/s 4(1) which came to be issued in the name of a dead person is liable to be set aside.

13. The learned senior counsel would then rely upon the Judgment reported in The Secretary Govt., of Tamil Nadu, Social Welfare Dept. and Ors. v. Parvathi and

Ors., 2001 (4) CTC 420, wherein, the Division Bench of this Court was pleased to hold as to how an award that came to be passed without proper notice to the concerned owners of the lands would vitiate the whole proceedings.

14. Looked at from all angles, I am of the view that at every stage of the proceedings, the respondents have not adhered to the provisions of the Land Acquisition Act and having regard to my findings on the infirmities relating to the issuance of Notification u/s 4(1) and the holding of 5(A) enquiry, it will have to be held that the impugned Notification u/s 4(1)m dated 22.9.1992 as well as the ultimate declaration made u/s 6 dated 15.11.1993 are liable to be set aside and accordingly the same are hereby set aside.

15. In the result, the writ petitions succeed and the same are allowed. No costs. However, it is open to the respondents to issue fresh proceedings in the manner known to law. Consequently, all connected W.M.P.s are closed.