
(2003) 09 MAD CK 0052

In the Madras High Court

Case No : Writ Petition No. 1722 of 1999

A.S. Periasamy

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 29-09-2003

Acts Referred:

Land Acquisition Act, 1894 — Section 4(1), 5A, 6

Citation : (2004) 2 CTC 406 : (2004) 1 LW 38 : (2004) 1 MLJ 194

Hon'ble Judges : P.K. Misra, J

Bench : Single Bench

Advocate : M. Sudhakar, for R. Subramanian, for the Appellant; Thenmozhi Sivaperumal, for respondents 1 to 4, for the Respondent

Judgement

P.K. Misra, J.—Heard the learned counsel appearing for the parties.

2. The petitioner has prayed for issuing a Writ of Certiorari to quash the proceedings in Roc. 12718/97(Y1) dated 22.12.1997 issued u/s 4(1) of

the Land Acquisition Act as well as for quashing the declaration issued u/s 6 of the Land Acquisition Act.

3. The petitioner has challenged the validity of such notification on the ground that the provisions relating to issuance of notice, particularly, notice

relating to enquiry u/s 5-A of the Act had not been complied with. It is also contended that the notification u/s 4(1) had not been published in

accordance with law.

4. The notification u/s 4(1) of the Land Acquisition Act was published in the District Gazette of Dharmapuri District on 30.12.1997. Subsequently,

there was a publication in the newspaper and in the locality on 5.1.1998. The contention of the learned counsel for the petitioner at this stage is that

the publication in the District Gazette is not contemplated u/s 4(1) of the Act.

Section 4(1) of the Central Act is to the following effect:

(a) for the expression ""whenever it appears to the appropriate Government"", the expression ""Subject to the provisions of sub-section (1-A),

whenever it appears to the Collector or the Commissioner of Land Administration or the Government, as the case may be,"" shall be substituted;

(b) the following Explanation shall be added at the end, namely:-

(a) may precede each other;

(b) shall be completed within a period of sixty days. The period of sixty days shall be reckoned from the date of publication of notification in the

Official Gazette or the date of publication of such notification in two daily newspapers or the date of giving public notice, whichever is earlier.

5. By Act 16 of the Land Acquisition (Tamil Nadu Amendment) Act, 1996 certain amendments have been effected. Section 4(1) as amended by

Act 16 of 1997 would read as follows:

Publication of preliminary notification and powers of officers thereupon--(1) Whenever it appears to the [appropriate Government] that land in any

locality [is needed or] is likely to be needed for any public purpose [or for a company] a notification to that effect shall be published in the Official

Gazette [and in two daily newspapers circulating in that locality of which at least one shall be in the regional language] and the Collector shall cause

public notice of the substance of such notification to be given at convenient places in the said locality (the last of the dates of such publication and

the giving of such public notice, being hereinafter referred to as the date of the publication of the notification}.

6. The contention of the petitioner is to the effect that as per Section 4(1), the notification has to be published in the Official Gazette. The

expression "Official Gazette" has not been defined in the Land Acquisition Act. Therefore, the meaning has to be ascertained from the General

Clauses Act:

Section 3 In this Act, and in all Central Acts and Regulations made after the commencement of this Act, unless there is anything repugnant in the

subject or context,--

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(39)""Official Gazette"" or ""Gazette"" shall mean the Gazette of India or the

official Gazette of a State;

7. It is the contention of the petitioner that Official Gazette should mean the Gazette of the State which is published from Fort St. George and not a

Gazette which is published in a particular district of the State. Learned counsel for the petitioner has also referred to the Law Lexicon by P.

Ramanatha Iyer 1997 edition wherein it is indicated that official Gazette means in the case of residents of Madras Fort St. George Gazette.

8. Learned counsel for the petitioner relied upon Duley Singh Vs. The State of Uttar Pradesh and Others, wherein it was held in the context of

Motor Vehicles Act, gazette refers to Official Gazette of the State and not to the Central Government Gazette.

9. Incidentally, it may be pointed out that in the Standing Orders of the Board of Revenue relating to acquisition of land for public purpose, in

Chapter VII Section 7(b) guidelines have been indicated relating to issuance of notification u/s 4(1). In the matter of publication of notification, it

has been indicated as follows:

Publication of the notification:-The Government will direct the publication of the notification if they approve of the proposed acquisition. The

notification should be published only in English in the Fort St. George Gazette. It need not be republished either in English or in the regional

language in the District Gazette.

10. In the counter affidavit filed on behalf of the respondent, it is stated that the District Gazette is also a gazette published officially and since the

power of issue of notification u/s 4(1) has been delegated to the District Collector, publication of notification in the District Gazette can be held to

be sufficient.

11. In the absence of any definition of Official Gazette in the Land Acquisition Act, the meaning ascribed to such expression in the General Clauses

Act should be followed, wherein, it has been indicated that Official Gazette mean the Gazette published by the Central Government or the Official

Gazette of a State. As compared to the Central Act, such provision, in Act 31 of 1978 which relates to acquisition of land for certain purposes

inside the State of Tamil Nadu, provision has been made for publication in the District Gazette. Act 31 of 1978 was incorporated in the year 1978

wherein it was specifically contemplated that notification would be published in a

District Gazette. While amending the Land Acquisition Act in the year 1997, it must be deemed that the Legislature was aware of the distinction between District Gazette and the Gazette of a State and yet while amending Section 4(1) the Legislature never thought it fit to amend the expression Official Gazette as contained in Section 4(1) of the Central Act. In such view of the matter, I am inclined to hold that the expression Official Gazette in Central Act means the Official Gazette of the State and cannot mean a District Gazette. The first contention by the learned counsel for the petitioner is therefore accepted.

12. Learned counsel for the petitioner has also raised serious contention regarding the manner of notice relating to Section 4(1) as well as Section 5-A of the Land Acquisition Act. It is his contention that apart from publishing the 4(1) notification in the Gazette, in the Newspaper and in the locality, as specifically contemplated in Section 4(1) of the Act, the Authority should have also issued individual notice to the person concerned.

For the aforesaid purpose, he has placed reliance upon 1989 Writ Law Reporter 89. However, on careful reading of the aforesaid decision, I do

not find anything which indicates that apart from publishing 4(1) notification in the manner contemplated in Section 4(1) there is any other

requirement of issuing individual notice. However, the allied contention of the counsel for the petitioner that notice relating to Section 5-A should

have been issued to the individual concerned as contemplated cannot be brushed aside lightly. 1989 Writ Law Reporter 89 is squarely applicable

so far as this contention is concerned. Since the person whose land was sought to be acquired was known, as far as practicable, every effort

should be made by the concerned authority to serve notice on such person relating to 5-A enquiry. Section 45(1) of the Land Acquisition Act

contemplates that service of any notice should be made by delivering or tendering a copy thereof; in the case of notice u/s 4 by the Officer therein

mentioned and in the case of any other notice by an order of the Collector. Sub-section 2 envisages wherever it may be practicable, service of the

notice should be made on the person named therein. Sub-section 3 which is relevant is extracted hereunder:

When such person cannot be found, the service may be made on any adult male member of his family residing with him; and, if no such adult male

member can be found, the notice may be served by fixing the copy on the outer door of the house in which the person therein named ordinarily

dwells or carries on business, or by fixing a copy thereof in some conspicuous place in the office of the officer aforesaid or of the Collector or in

the Court-house, and also in some conspicuous part of the land to be acquired.

13. In the present case, the purported service of notice is by affixture of copy of the notice on survey stone of the land to be acquired. An analysis

of Section 45(3) makes it clear that if the person to be served cannot be found, the service may be made on any adult male member of the family.

If no such adult male member can be found, the notice may be served by fixing a copy on the outer door of the house, in which, the person

ordinarily resides or carries on business or by fixing a copy thereof in some conspicuous place in the Office of the concerned Officer or in the

Office of the Collector and it also further contemplates that such notice should be fixed in some conspicuous place of the land to be acquired. A

perusal of the counter affidavit indicates that it is the last method which was sought to be adopted. There is nothing to indicate that any attempt was

made to serve on any adult male member of the family and if there was no such adult male member, at least the notice should have been fixed on

the outer door of the house or in some conspicuous place in the Office of the concerned officer or the Collectorate.

14. It has been held in a series of decision that the requirement relating to service of notice is mandatory:

(1) P.C. Thanikavelu vs. The Special Deputy Collector for Land Acquisition, Madras and another reported in 1989 WLR 89

(2) Muthu vs. The Government of Tamil Nadu rep. By the Secretary, Social Welfare Dept. reported in 1986 WLR

(3) Ramiah Moopnar Vs. State of Tamil Nadu and another,

(4) P. Rajendran vs. The District Collector, Salem and another reported in (2000) 2 M.L.J. 790.

15. Apart from the above, it appears that the Collector thought it fit to send notice by Registered Post. However, such notice by Registered Post

came back unserved with the endorsement that the address given was insufficient. Matters on record indicate that the petitioner at the relevant time

was serving as Block Development Officer under the State Government. It is

surprising to note that the present address of the Officer of the State Government was not known and no attempt has been made to find out the address of an Officer of the State Government, after the Registered notice returned back with the endorsement "insufficient address".

16. For the aforesaid reasons, since the publication had not been made in the Gazette, as contemplated u/s 4(1) and since the notice relating to enquiry u/s 5-A had not been issued and served, it is obvious that the land acquisition proceeding is vitiated.

17. Learned counsel for the respondent with reference to the records available submitted that apart from fixing notice on the survey stone, wide publicity had been made by way of beating of "Tom Tom" in the village in the presence of several persons. This method is not contemplated u/s 45(3) and this cannot have the effect of relieving the authority of the statutory obligation to effect service as contemplated u/s 45. The decisions already mentioned clearly lay down that the absence of notice would vitiate the proceeding. For the aforesaid reasons, the proceedings are liable to be quashed.

18. Learned counsel for the respondent has also placed reliance upon the decision of the Supreme Court in the case of Ramniklal N. Bhutta and another Vs. State of Maharashtra and others, and particularly the observations made in paragraph 10 of the said judgment. In the present case, the land acquisition proceedings have been challenged at the stage of declaration u/s 6(1) and further proceedings have been stayed. The compensation is yet to be calculated. The petitioner has been deprived of an opportunity of having his say in the 5-A enquiry. The ratio of the decision is not applicable to the facts of the present case.

19. Having regard to the facts and circumstances of the case and particularly, keeping in view the decisions of this Court as well as the Supreme Court, I think it fit and proper to quash the declaration u/s 6 and the notification u/s 4(1) of the Act and accordingly the same are quashed. It is, however, made clear that if there is a requirement for acquisition of the land, it will be open to the appropriate authority to initiate fresh proceedings in accordance with law.