
(1964) 08 MAD CK 0041
In the Madras High Court
Case No : Writ Petition No. 895 of 1962

C. Mothaliandan Chetty

APPELLANT

Vs

The State of Madras and Another

RESPONDENT

Date of Decision : 26-08-1964

Acts Referred:

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

Citation : (1965) ILR (Mad) 638

Hon'ble Judges : Veeraswami, J

Bench : Single Bench

Advocate : V. Suresham, for the Appellant; K. Venkatasami, for V. Ramaswami, Additional Government Pleader, for the Respondent

Judgement

Veeraswami, J.—This petition is to quash certain proceedings to compulsorily acquire the Petitioner's land comprised in R.S. No. 154-1

part at Egmore. The notification u/s 4(1) of the Land Acquisition Act was published on September 21, 1956. In that notification the proposal to

acquire was confined to 650 square feet in that survey number so far as the Petitioner was concerned. According to the Petitioner, he did not

know about the notification and it was only as a result of the correspondence with the Collector he came to know of the proceedings. He was

actually informed only by a letter of the Collector, dated June 25, 1956 that a portion of the land in R.S. No. 154-1 part was to be acquired.

Thereafter the Petitioner sent his objections by registered post in August 14, 1956. On behalf of the Respondents it is stated in the counter--

affidavit that these objections were considered but overruled. The publication of the declaration u/s 6 followed in January 1958. In that declaration

the extent decided to be acquired was mentioned as 650 square feet. By a

notification, dated May 16, 1962, the State Government sought, so it claimed, to correct an error. This notification said that in the publication of the declaration u/s 6, the following erratum should be noted:

Against R.S. No. 154-1, part (new R.S. No. 154-23), for "650 square feet" read, C.O-1-210 square feet."

2. That meant that what was acquired was not merely 650 square feet but 2,610 square feet.

3. It is contended, and this is the only point taken in the affidavit in support of the petition, that inasmuch as he had not been heard u/s 5A, the

proceedings after the stage of the notification u/s 4(1), are vitiated and should be quashed. This contention overlooks the fact that the objections

filed by the Petitioner were themselves belated. Section 4(1) does not contemplate personal service of notice on the Petitioner. Section 5A

provides that objections should be filed within thirty days after the issue of the notification u/s 4(1). As a matter of fact, it would appear that a

notice of the substance of the notification u/s 4(1) was affixed at the residence of the Petitioner. The Petitioner sent his objections not within thirty

days as provided by Section 5A but only on August 14, 1956. If notwithstanding these facts the objections were considered by the department

before a decision was arrived at and a declaration u/s 6 was published, the Petitioner should only be thankful. It would have been quite open in the

circumstances for the Land Acquisition Officer to have taken up the stand that, as these objections were received late, they could not be

considered. The complaint of the Petitioner that he should have been heard u/s 5A, therefore, has no substance.

4. The next contention for the Petitioner, which is not precisely taken in the affidavit in support of the petition but is substantial and which I have

allowed him to take, is that the notification, dated May 16, 1962 is illegal. As I mentioned, both the notification u/s 4(1) and the publication of the

declaration u/s 6 only mention the extent of the land to be acquired as 650 square feet in the particular survey number. Apparently a larger extent

was meant to be acquired but by some mistake this was not included in the two notifications. The question is whether the Land Acquisition Officer

of the State Government could after the publication of the declaration alter the extent by means of an erratum notification. Section 4(1) no doubt,

as contendee for the Respondents, only says that whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose, a notification to that effect shall be published in the official gazette. But I do not think that this section can reasonably be interpreted to mean that it does not require specification of the particulars of the land including the extent which is proposed to be acquired. It may be conceded that Section 4(1) is a preliminary step, in the sense that after investigation the Government may decide not to proceed with the acquisition. A reference to the scheme of Section 5A as also Section 6 would also show that in the notification u/s 4(1) the description and precise extent of the land intended to be acquired should be mentioned. For, otherwise the purpose of Section 5A will be defeated. u/s 5A the Petitioner would be entitled to show that not only there was no public purpose, but if there was a public purpose, the particular land sought to be acquired need not be acquired or even if it should be acquired, not the whole extent. His objections can cover both the aspects, namely the existence of public purpose and the need to acquire the whole or part of the land proposed to be acquired. This right to make objections will be rendered futile if the notification u/s 4(1) is not required to specify the description and extent of the land intended to be acquired.

For the Respondents a comparison is made between Section 4(1) and Section 6(1), and it is contended that it is only in the publication of the declaration u/s 6(1) that he is required to give particulars of the land needed for a public purpose. Whereas Section 4(1) speaks of any land in any locality Section 6(1) refers to a particular land. The reason is obvious. The notification u/s 4(1) is but a proposal and it is only at the stage of declaration u/s 6(1) the State Government decides after considering the objection u/s 5A as to the existence of a public purpose and the need to acquire a particular land. But that does not mean that Section 4(1) does not require the particulars of the land to be given in the notification therein.

I can understand a larger extent of land being mentioned in the notification u/s 4(1) and the State Government deciding to acquire at the stage of Section 6(1) a lesser extent of land mentioning only that extent of land in the publication of the declaration u/s 6(1). But this is a converse case. The Act does not contemplate a notification to acquire a lesser extent of land but the Government eventually deciding to acquire a larger extent of land

later in the same proceedings. As a matter of fact, it is seen from the Land Acquisition Manual that the notification u/s 4(1) should be prepared in

Form 2-A or Form 2-B given in Appendix XII. These two forms contain schedules and one of the columns in the schedule relates to the

description of the land with survey or paimash number, and another column requires the boundaries of land to be given. There is, therefore, no

legal sanction, after the stage of publication of a declaration u/s 6 to enlarge the extent of land to be acquired on the ground that a mistake had

crept in and by means of a publication in the Fort St. George Gazette, an erratum notification.

5. The result is the petition is allowed in part, and the erratum to the notification under the Land Acquisition Act and which was published in the

Fort St. George Gazette, dated May 16, 1962 is hereby quashed. The rest of the Acquisition proceedings are not affected by this order. No costs.