

(2007) 08 MAD CK 0197

In the Madras High Court

Case No : Writ Petition No. 24358 of 2005 and WP.M.P. No"s. 26600 of 2005 and 1627 of 2007

Chandra Textiles Ltd.

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 07-08-2007

Acts Referred:

Land Acquisition Act, 1894 — Section 3(C), 4, 4(1), 5(A), 5A(2)

Citation : (2007) 08 MAD CK 0197

Hon'ble Judges : A. Kulasekaran, J

Bench : Single Bench

Advocate : T.R. Rajagopalan, S.C. for T.R. Rajaraman, for the Appellant;
Bhavani Subbarayan, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

A. Kulasekaran, J.—This writ petition is filed seeking is issuance of writ of Certiorari to call for the records of the second respondent in G.O. Ms. No. 217. (Housing & Urban Development) dated 28.2.1994, u/s 4(1) of the Land Acquisition Act, 1894 (in short, "the Act") and G.O. Ms. No. 114 (Housing & Urban Development) dated 31.3.2005 u/s 6 of the Act published in Tamil Daily "Dinamalar" dated 28.2.1994 and 2.4.2005, quash the same.

2. The petitioner owns certain, lands in Kalpatti Village, Coimbatore, as per the details given below:

S. No.

Extent (Hec.)

Acres.

417/1

0.88.5

2.19

418

2.89

7.14

420/1

0.93.5

2.89

421/1

0.72.0

1.78

13.50

The respondents initiated acquisition proceedings to acquire the aforesaid lands of the petitioner and issued notification u/s 4(1) of the Act, which was published in Government Gazette on 28.2.94. The last mode of publication u/s 4(1) of the Act in the locality was made on 15.6.94. Thereafter, declaration u/s 6 of the Act was published in Government Gazette on 22.5.95, which was challenged by the petitioners in W.P. No. 2190 of 1996. Along with the said writ petition, W.P.M.P. No. 3381 of 1996 was filed seeking interim stay of the acquisition proceedings and the same was granted by this Court by order dated 27.2.1996. Thereafter, the said writ petition was allowed by this Court by order dated 5.4.2004, whereby declaration u/s 6 made on 22.5.1995 was quashed.

3. It is seen from the records that on the date of quashing of the declaration u/s 6 of the Act on 5.4.2004, only 23 days were left for the period of completion of one year, if at all the respondents ought to have issued a fresh declaration within the said period of 23 days, viz., on or before 29.4.2004, but, the fresh declaration u/s 6 of the Act was made only on 31.3.2005 and as such, it is much beyond the period of one year, hence, the petitioner, has filed the present writ petition seeking to quash the fresh declaration dated 31.3.2005 as well as the notification u/s 4(1) of the Act.

4. Mr. T.R. Rajagopalan, learned senior counsel appearing on behalf of the petitioner, while reiterating the contents stated in the affidavit filed in support of the petition, submitted that since the fresh declaration has been made beyond the period of one year the same is invalid. He further submitted that as per the notification issued u/s 4(1) of the Act, the Special Tahsildar (Land Acquisition) Housing Scheme Unit-II alone is authorised to conduct enquiry u/s 5(A) of the Act and to perform the functions of the Collector u/s 3(C) of the Act, but the enquiry, in the instant case, was conducted by the Special Tahsildar (Land Acquisition) Housing Scheme Unit-I, who is not the competent person and hence,

the enquiry u/s 5(A) of the Act conducted by him is also not valid. In support of the said plea, the learned senior counsel relied on the Division Bench judgment of this Court in T.N.H.B. v. A.P. Damodarasamy (2007) 3 MLJ 189 wherein this Court has observed in paragraph 8 as follows:

8. With regard to first contention, it is brought to our Notice that in the Notification issued u/s 4(1) of the Act, the Government of Tamil Nadu, authorised the Special Tahsildar (Land Acquisition), Housing Scheme Unit III to perform the functions u/s 3(c) of the Act. A perusal of the Notice issued u/s 5-A as well as the proceedings u/s 5-A(2) show that the entire proceedings u/s 5-A of the Act had been conducted only by the Special Tahsildar (Land Acquisition), Housing Scheme Unit II. As rightly pointed out by Mr. R. Muthukumarasamy, learned senior counsel for the land owners, the authorisation given by the State Government for issuing Notification u/s 4(1) of the Act is a statutory one. Unless and until the amendment to the Notification is issued by the Government, authorising the Special Tahsildar (Land Acquisition) Housing Scheme Unit II, to perform the functions u/s 3(c) of the Act, he has no jurisdiction to exercise the statutory functions. In those circumstances, as rightly pointed out, the proceedings initiated by him u/s 5-A of the Act is void, as the same is done without jurisdiction. Similarly, the award proceedings had also been conducted by the very same Officer without any statutory authorisation, as such the awards are also liable to be quashed.

5. On the above contention, this Court heard the learned Addl. Government Pleader for respondent.

6. Now, we look into the provisions of Section 6 of the Land Acquisition Act, 1894, which runs as follows:

6. Declaration that land is required for a public purpose.- (1) Subject to the provisions of Part VII of this Act, when the appropriate Government is satisfied, after considering the report, if any, made u/s 5-A, under Sub-section (2), that any particular land is needed for a public purpose, or for a company, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorised to certify its orders, and different declarations may be made, from time to time, in respect of different parcels of any land covered by the same notification u/s 4, Sub-section (1), irrespective of whether one report or different reports has or have been made (whenever required) u/s 5-A Sub-section (2):

Provided that no declaration in respect of any particular land covered by a notification u/s 4, Sub-section (1)

(i) ...

(ii) published after the commencement of the Land Acquisition (Amendment) Act, 1984, shall be made after the expiry of one year from the date of the publication of the notification:

Provided further that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority.

Explanation-1: In computing any of the periods referred, to in the first proviso, the period during which any action or proceeding to be taken in pursuance of the notification issued u/s 4, Sub-section (1) is stayed by an order of a Court shall be excluded.

Explanation 2: Where the compensation to be awarded for such property is to be paid out of the funds of a corporation owned or controlled by the State, such compensation shall be deemed to be compensation paid out of public revenues.

(2) Every declaration shall be published in the official gazette and in two daily newspapers circulating in the locality in which the land is situate of which at least one shall be in the regional language, and the Collector shall cause public notice of the substance of such declaration 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 declaration) and such declaration shall state the district or other territorial division in which the land is situate, the purpose for which it is needed, its approximate area, and, where a plan shall have been made of the land, the place where such plan may be inspected.

(3) The said declaration shall be conclusive evidence that the land is needed for a public purpose or for a company, as the case may be and, after making such declaration, the appropriate Government may acquire the land in manner hereinafter appearing.

7. In this case, notification u/s 4(1) of the Act was published on 28.02.1994 i.e., after the commencement of the Land Acquisition (Amendment) Act, 1984. The above proviso (ii) to Section 6 says that no declaration in respect of any particular land covered by a notification u/s 4, Sub-section (1) shall be made after expiry of one year from the date of publication of the said notice. In the present case, the notification u/s 4(1) of the Act was made on 28.02.1994, the last mode of publication u/s 4(1) of the Act in the locality was made on 15.06.2004, the writ petition filed challenging the declaration u/s 6 was dismissed on 05.04.2004, hence, after excluding the period of stay, the limitation starts run from 05.04.2004, on the day only 23 days left for completion of the period of one year, within the said 23 days or on or before 29.04.2004, the declaration u/s 6 ought to have been made by the respondents, but the same was made only on 31.03.2005, hence, the same is beyond the period of one year. In this context, it is useful to refer to the decision of the Honourable Supreme Court rendered in Rambhai Lakhbai Bhakt Vs. State of Gujarat and others, wherein in Para-8, it was held by the Honourable Supreme Court thus:

8. It is then contended that on the dates mentioned in his writ petition filed in the High Court, the declaration u/s 6 was published beyond one year and that,

therefore, the declaration is invalid in law. We find no force in the contention. It is seen that under Clause (2) of Section 6 the declaration shall be published within one year from the date of the publication of the notification u/s 4(1). That section clearly adumbrates that one year has to be counted from the date of the publication namely in the Gazette or last of the dates of publication envisaged thereunder excluding the time during which further proceedings were stayed by the High Court. The last date is referred to as the date of the publication of the notification to reckon one year. It would be seen that declaration u/s 6 was published within one year of the last of the dates of local publication u/s 4(1), in view of the closeness of the publication of these in the Gazette.

8. It is not in dispute that in this case the fresh declaration u/s 6 of the Act was made beyond a period of one year. It is also not disputed by the learned Government Advocate that the Special Tahsildar (Land Acquisition) Housing Scheme Unit-I had conducted the enquiry, u/s 5-A of the Act on several occasions.

9. In view of the above undisputed facts, this Court, has no other option except to quash the proceedings namely the declaration made u/s 6, 5-A and the notification u/s 4(1) of the Act and accordingly they are quashed. The writ petition is allowed as prayed for. No costs. Consequently, connected miscellaneous petitions are closed. It is made clear that if the Government intends to proceed afresh, they may do so in accordance with law.