
(1984) 12 MAD CK 0009
In the Madras High Court
Case No : W.A. No's. 177 to 179 of 1983

Chinnamma and Others

APPELLANT

Vs

State of Tamil Nadu and Another

RESPONDENT

Date of Decision : 05-12-1984

Acts Referred:

Land Acquisition Act, 1894 — Section 17(1), 17(4)

Citation : AIR 1986 Mad 55 : (1985) ILR (Mad) 97

Hon'ble Judges : Ramanujam, J;Maheswaran, J

Bench : Division Bench

Judgement

Ramanujam, J.—These writ appeals are directed against the decision of Mohan J. in W. P. Nos. 9511, 9512 and 9513 of 1982 sustaining

the validity of the notification dated 4-8-1982, under S. 4(1) of the Land Acquisition Act and the consequential declaration under S. 6 of the Land

Acquisition Act, so far as it relates to the lands belonging to the petitioner in each of the three writ petitions.

2. In G. O. Ms. No. 976 Industries Department dated 15-7-1981, the Government issued orders for acquisition of 913.77 acres of land (890.53

dry + 23,24 wet), under ordinary provisions of the Act in old Gummudipoondi village and other villages in Gummudipundi taluk for setting up an

industrial complex in Gummudipoondi in Chingleput district. The State Industries Promotion Corporation Ltd. Tamil Nadu, hereinafter called

SIPCOT, stressed the need for the acquisition of the land under emergency clause by their letter No. 37/8 dated 19-8-1981, to the Government

and the Government passed G.O. Ms. No. 694, Industries, dated 21-5-1982, directing the acquisition of lands under the urgency provisions in

respect of waste arable lands and lands where there are no structures and in

respect of the other lands under the ordinary provisions of the Act.

Then the Government passed G.O. Ms. No. 1043 Industries, dated 29-7-1982, containing notification under S. 4(1), the consequential directions

under S. 17(I), the consequential direction under S. 17(4), the consequential declaration under S. 6 and the consequential direction under S. 7 of

the Land Acquisition Act 1894 in respect of the lands of the petitioners and others. It is against the said notification dated 29-7-1982, the appellant

filed writ petitions questioning the validity and contending- (1) that there is no justification for dispensing with the enquiry under S. 5-A of the Act:

(2) that the purpose of invoking the urgency provisions being to minimise the delay in the post-notification stage and put the lands in use within a

reasonable period, the enquiry under S. 5-A can be dispensed with only in case where there is real urgency which can brook no delay and these

conditions are entirely absent in this case and as such directions under Ss. 17(1) and 17(4) are illegal and arbitrary:

(3) If the directions under Ss. 17(I) and 17(4) are illegal, then the consequential declaration under S. 6 is also illegal and void.

(4) The notification in so far as the declaration under S. 6 proceeds on the basis that the compensation to be paid out of public revenue, which is

incorrect statement and therefore, the declaration under S. 6 is vitiated;

(5) The impugned notification invoking the urgency clause is void for violation of Art. 14 of the Constitution of India in that the lands belonging to

one A. V. Ramakrishnan and one A. M. Srinivsan, which are also vacant lands, the emergency provision has not been invoked and this indicates

that the petitioners have been subjected to hostile discrimination.

3. In the counter-affidavit filed by the respondents in the writ petition, the invocation of the urgency clause was justified as a correct decision taken

by the Government, having regard to the circumstances of the case and the dire necessity to acquire the lands urgently for starting the industrial

complex at Gummudipoondi and it was stated that no discrimination was shown between the petitioners and others whose lands are to be acquired

as part of the scheme of acquisition.

4. Mohan J. had held that since the compensation is to come out of the public revenue, the acquisition can be initiated under Part II of the Land

Acquisition Act, that dispensing with S. 5-A enquiry and the invocation of the

urgency clause was justified on the facts and circumstances of the case, that the petitioner's lands have been classified as manavari, which would come within the expression of arable land and that the emergency clause had rightly been invoked. In that view, the writ petitions had been dismissed and against the judgment of Mohan J. the appellants have come before this Court by way of these writ appeals.

5. Before us, Mr. Chidambaram the learned counsel for the appellants has raised the following four legal contentions- (1) that there has been no application of the mind and there is a mechanical invocation of the urgency provisions of the Land Acquisition Act, and therefore, the dispensation of the enquiry under S. 5-A of the Act should be held to be void.

(2) That the invocation of the urgency clause was only in the case of the petitioners appellants while the similar lands in the hands of Thiruvallur

A. V. Ramakrishnan and Srinivasan had been acquired under the ordinary provisions of the Act in G. O. Ms. No. 1122, Industries, dated 12-8-1982, and this amounts to a hostile discrimination, violative of Art. 14 of the Constitution.

(3) That the recitals as to wherefrom compensation payable for the lands is to come, is false on the face of it as the earlier orders of the

Government were to the effect that SIPCOT has to pay the full compensation payable for the lands and such a false recital in the declaration under

S. 6 will make the declaration itself invalid.

(4) That, in any event, in this case since the acquisition is for SIPCOT, which is a company incorporated under Indian Companies Act, the

acquisition should have been done under Part VII of the Land Acquisition Act and therefore the acquisition under Part II is invalid.

6. We will now proceed with the above four points seriatim. So far as the first point is concerned, the contention of the learned counsel for the

petitioners is that the invocation of the urgency clause cannot be automatic or mechanical, that there should be a conscious application of the mind

on the question as to whether an enquiry under S. 5-A of the Act should be dispensed with and that if there is a mechanical invocation of the

urgency clause without an actual application of the mind, the invocation of the urgency clause should be held to be bad. Mohan J. has referred to

the fact that originally the Government in G.O. Ms. No. 976 Industries dated

15-7-1981, had directed the Collector to submit necessary proposal for the acquisition of land under Land Acquisition Act, in respect of the lands in Gummudipoondi under the ordinary provisions of the Act. Later, in view of the representation made by SIPCOT to acquire the lands under the urgency provisions, the Government, after careful consideration, approved the revised proposal of SIPCOT for the acquisition of the lands invoking the urgency provisions under S. 17(l) of the Act in respect of lands where there are no structures and lands which are arable and waste and in respect of the other lands, land acquisition proceedings to be initiated under the ordinary provisions of the Land Acquisition Act, and that a careful reading of the file clearly discloses that apart from mechanically invoking the urgency provisions, the Government had taken steps at every stage to see that it was not invoked as a matter of course. According to the learned Judge, the Government was aware of the scope of S. 17(1) of the Land Acquisition Act and expressly stated that wherever there are structures on the lands proposed to be acquired, they should be excluded from the purview of the urgency clause of the Act. This also shows that there has been application of the mind. In that view, the learned Judge justified the invocation of the urgency clause. The learned counsel for the petitioners would say that it is only in cases where the acquisition of land will brook not even a delay of one month, the urgency provisions could be invoked. In support of this contention, he refers to the decisions in *Muthu Gounder v. Govt. of Madras*, (1968) 2 MLJ 349, and *P.V. Mohammed Ghouse Vs. State of Tamil Nadu and Another*, . However, we are in agreement with Mohan J. when he says that it cannot be stated as a general proposition that only if the matter cannot brook a delay of 30 days, urgency provisions can be invoked. The above rulings relied on by the learned counsel for the petitioners cannot be taken to lay down such a general proposition. The invocation of urgency provisions will have to depend upon the circumstances of each case. The learned counsel then refers to a decision of the Supreme Court in *Narayan Govind Gavate and Others Vs. State of Maharashtra and Others*, , in support of his case that having regard to the purposes for which the land was required, that is, for the development of an area for industrial purposes, there is no justification for invoking the urgency clause. In that

case certain lands were sought to be acquired for the development and utilisation of the same as a residential and industrial area under the

emergency provisions of the Act without holding even a summary enquiry under S. 5-A of the Act. The Supreme Court, taking note of the object

for which the lands were acquired, i.e. the development of the same as an industrial area, held that such schemes generally take sufficient period of

time to enable at least summary inquiries under S. 5-A of the Act to be completed without any impediment whatsoever to the execution of the

scheme and that the very statement of the public purpose for which the land was to be acquired indicated the absence of such urgency, on the

apparent facts of the case, as to require the elimination of an enquiry under S. 5-A of the Act. Having held that the purpose of the acquisition

recited in S. 4(1) notification itself indicates that there is no justification for dispensing with the summary enquiry under S. 5-A of the Act, the

Supreme Court proceeded to observe further as follows-

The uniform and set recital of a formula, like a ritual or mantra, apparently applied mechanically to every case, itself indicated that the mind of the

Commissioner concerned was only applied to the question whether the land was waste or arable and whether its acquisition is urgently needed.

Nothing beyond that seems to have been considered.

Reference has also been made to the decision of the Supreme Court in State of Punjab and Another Vs. Gurdial Singh and Others, , where the

Supreme Court dealing with the invocation of the emergency power under the provisions of the Land Acquisition Act, observed as follows-

Without referring to supportive case law it is fundamental that compulsory taking of a man's property is a serious matter and the smaller the man

the more serious the matter. Hearing him before depriving him is both reasonable and pre-emptive of arbitrariness, and denial of this administrative

fairness is constitutional anathema except for good reasons. Save in real urgency where public interest does not brook even the minimum time

needed to give a hearing land acquisition authorities should not, having regard to Arts. 14 and 19, burke an enquiry under S. 17 of the Act.

Swadeshi Cotton Mills Vs. Union of India (UOI), , was also relied on by the learned counsel for the appellants in support of his plea that the

opinion of the Government on the question of urgency is not final and that such

an opinion is open for judicial review.

In that case, the Supreme Court observed as follows (at p. 836)-

It cannot be laid down as a general proposition that whenever a statute confers a power on an administrative authority and makes the exercise of

that power conditional on the formation of an opinion by that authority in regard to the existence of an immediacy, its opinion in regard to that

preliminary fact is not open to judicial scrutiny at all. While it may be conceded that an element of subjectivity is always involved in the formation of

such an opinion but as was pointed out by this Court in *Barium Chemicals*, AIR 1975 SC 295 the existence of the circumstances from which the

inferences constituting the opinion, as the *sine qua non* for action are to be drawn, must be demonstrable, and the existence of such circumstances

if questioned, must be proved at least *prima facie*.

7. Before going into the question as to whether the decision to invoke the urgency clause in the circumstances of the case could be the subject

matter of a judicial review, we must see whether the emergency provisions have been invoked mechanically as pointed out by the learned counsel

for the appellants or whether it has been invoked after due application of the mind to the facts and circumstances of the case as contended for the

respondents. Though Mohan, J. says that the perusal of the file discloses that there has been an application of the mind by the Government as is

clear from paragraph 3 of the G.O. Ms. No. 694 dated 21-5-1982, and that such application of mind would be evident from a comparison of the

G.O. Ms. No. 976 dated 15-7-1982, and the impugned G.O. Ms. No. 694 Industries, dated 21st May 1982. However, a close perusal of the

files relating to the impugned G. O. indicates that no opinion was formed by any one, leave alone the Government as to the existence or otherwise

of the urgency and no decision was taken and that there has been a mechanical issuance of a notification invoking the urgent y clause. It is no doubt

true that the impugned,, notification directs that in view of the urgency of the case, the provisions of S. 5-A of the Act shall not apply to the case.

But the question as to whether there is urgency or not has not been gone into by the Government at any stage, before the impugned notification

was issued. It is no doubt true that SIPCOT has been urging the Government to acquire the lands in question under the emergency provisions of

the Land Acquisition Act, and as per their request, the impugned notification had been issued. But, the question is whether there is application of

mind on the part of the Government to the question of urgency. It is no doubt true that in G.O. Ms. No. 694 dated 21st May 1982, paragraph 3

states as follows-

The Government after careful consideration approve the revised proposal of State Industries Promotion Corporation of Tamil Nadu Ltd., for the

acquisition of 924.09 acres of dry patta lands and direct that the land acquisition proceedings may be initiated invoking the urgency provision under

S. 17(1) of the Land Acquisition Act 1894 in respect of lands where there are no structures and the lands are arable and waste; and in respect of

other lands, land acquisition proceedings may be initiated under the ordinary provisions of the Land Acquisition Act".

After seeing the said notification, Mohan J. has proceeded on the basis of the recitals contained paragraph 3 therein and held that there is an

application of mind by the Government on the question of urgency. However, as the learned counsel for the petitioners contended that at no stage,

the question of urgency was considered by the Government, we perused the note files relating to the issue of the said G.O. Ms. No. 694 dated

21st May 1982, and we are surprised to find that there is not even a discussion on the question of urgency in the office of the Government. The

note file refers to the earlier G.O. Ms. No. 976 Industries, dated 15-7-1981, directing the acquisition of lands in Gummudipoondi under ordinary

provisions and the request of SIPCOT to acquire lands under the emergency provisions and to give suitable directions to the Collector of

Chingleput. The office note has been signed by the Under Secretary, the Joint Secretary and then the Secretary of the Industries Department. Then

the file goes to the Revenue Department and the file is returned with an endorsement with which we are not concerned. After the file goes back to

the Industries Department again the note refers to the request of the SIPCOT for the acquisition of the lands under the emergency provisions after

setting out the facts and circumstances which led to the acquisition of the lands. After setting out the facts, in paragraph 7 of the note, the request of

the Managing Director of SIPCOT for invoking the urgency clause is referred to and in paragraph 8, orders are sought for on the request

contained in paragraph 7. The note does not contain any discussion either for or against on the request of the Managing Director of SIPCOT or oil

the question of urgency. When orders are sought for on the request of the Managing Director, SIPCOT, contained in paragraph 7, no orders ha~

e been passed by anyone. After paragraph 8, which seeks an order on the request of the Managing Director, SIPCOT, the Under Secretary, Joint

Secretary and the Secretary, have merely signed without passing any orders. The file also contains the mere signatures of Mr. S.

Thirunavukkarasu, Minister for Revenue. Thus the file does not contain any discussion or decision by anyone on the request of the Managing

Director of SIPCOT for invoking the urgency clause. If the office in its note had suggested the acceptance of the proposal of the Managing

Director, SIPCOT. to acquire the lands invoking the urgency clause and in approval of that suggestion, signature is affixed by the Secretaries or the

concerned Ministers, it would have been a different thing. But, here the Office merely points out the request made by SIPCOT for invoking the

emergency clause and on that request, no orders have been passed by anyone. As a matter of fact, the file has been circulated to the Secretaries

for orders. Bu t, curiously, no order has been made by any of the Secretaries, or by the Ministers who have signed. Therefore, it is not possible to

say that anybody applied his mind to the question of urgency. It is no doubt true that the Managing Director of SIPCOT made a request to the

Government to invoke the urgency clause, but that request was put up for orders by the Office and no orders have been passed by anyone, though

the Under Secretary, Joint Secretary and Secretary as also the Ministers have merely put their signatures. It cannot be said that a signature

amounts to an order. As already stated, in case where the office suggests that the proposal of the Managing Director of SIPCOT for acquiring the

lands under emergency provisions may be approved and the note is signed by the higher authorities, it can be presumed that they have affixed their

signatures in approval of the suggestion made by the Office; but where the Office refers to the request of the SIPCOT and asks for an order, there

should be a specific order accepting the proposal of the SIPCOT. A translated copy of the relevant portion of the note file which is in Tamil has

been reproduced below with the signatures of the Secretaries and Ministers :-

Sd/-(in Tamil) S.Ramamurthy

13-4-82

Under Secretary

Sd/-(in Tamil)

Thiagarajan

Joint Secretary

(sd) File No.58300 MIG/2-81

Section Officer. This file may be sent to this section

Industries Department for perusal when a draft order is

(sd) (in Tamil) is submitted.

S.Thirunavukkarasu Through M.I.J.section.

22-4-82 M(Industries) Ind. UO No.58300-M/GII/

(sd) (in Tamil) 81-82 13-4-81

S.D.Somasundaram. (seal)Secretary (Revenue)

4-5-82 M(Revenue) Govt. of Industries

A draft order is submitted Govt.(Revenue)seal

below for approval 30211/C1/82

(sd) (sd) 20-5-82 Revenue No. 30211/ C1/ 82

19-8-82 U.S.(S.O.) dt. 17-4-82

(sd) 25-5-82 D.O.No.655 M(1)/82

dt. 22-4-82(Seal)

Through M.I.J.

MIG may let US (SO) see the case

Issued as G.O.Ms.Nk.694 Seal (Sd) 19-5-82

Industries, dt.21.5.82

Thus, the relevant note file produced by the Government clearly indicates that there is no application of the mind on the question of urgency by

anyone. Nor was there any decision taken or order passed on that question. We cannot, therefore, agree with the learned single Judge that there

has been an application of the mind on the question of any urgency and that there is no mechanical application of the emergency provisions. In this

view, it is not necessary to go into the question as to whether the opinion of the Government on the question of invoking the emergency provision is

subject to judicial review or not as that question does not arise in the absence of any opinion. Therefore, the first submission urged by the learned

counsel has to be accepted.

6. According to the aforesaid order the Collector of Chingleput and the SIPCOT were requested to furnish the particulars required in G.O. Note

No. 95500 /X"1/81-1 Revenue Department. dated 30-9-1981.

7. On the basis of the fact that the Government is not in favour of acquiring wet lands, the SIPCOT after careful consideration has proposed to

exclude from acquisition the wet lands measuring an extent of 32.07 necessary for this scheme for the Industrial Complex. Hence, the Chairman

and Managing Director of SIPCOT has now sought for the approval of the Government for the acquisition of revised extent of 924-09 acres of

dry lands and for the transfer of 58.64 acres of poromboke lands to this scheme, after obtaining proper sale, and for the acquisition of lands where

there are no structures, by invoking the urgency provision under S. 17(I) of the Land Acquisition Act, and where there are structures under the

ordinary provision of L. A. Act. in Gummudipoondi taluk, Chingleput District.

8. The file is being circulated requesting for an order on the request of the SIPCOT. referred to in para (7) above.

8. So far as the second contention, based on discrimination in applying the emergency provisions and dispensing with the enquiry under S. 5-A of

the Act is concerned, it is seen from the files relating to the acquisition of the lands belonging to Thiruvallagga A. V. Ramakrishnan and Srinivasan,

that the lands sought to be acquired comprised of substantial buildings and it is for that reason the urgency provisions have not been invoked and S.

5-A of the Act has been dispensed with. Admittedly, the lands sought to be acquired from the petitioners do not consist of buildings. The learned

counsel for the petitioners contended that in the notification under S. 4(I) of the Act in respect of those persons there is no reference to the

buildings and that the notification under S. 4(I) of the Act in relation to those persons is practically the same as issued in relation to the petitioners.

But, it is well established that S. 4(1) notification need not separately mention the superstructure standing on the land as the superstructures have

been annexed and go with the land. The existence of the buildings on the land sought to be acquired is a relevant factor for the purpose of invoking the urgency provisions and since the acquisition is based on relevant criterion, which has a reasonable nexus with the object sought to be achieved, the distinction made in the case of the lands of those two persons, cannot be taken to violate Art. 14 of the Constitution of India, as contended by the learned counsel for the petitioner. The second contention, therefore, fails.

9. The third contention as to the source from which the compensation is made payable for acquiring the lands, it is said that earlier the Government

directed that the entire compensation to be paid for the lands acquired will come from the funds of SLICOT. However, for the purpose of invoking

Part II of the Land Acquisition Act, for acquiring the lands, the Government has made a false and incorrect statement in the impugned notification

that the compensation has to be paid out of the public revenues and such a false recital in the notification, contrary to the facts, would vitiate the

notification under S. 4 of the Act, and the declaration under S. 6 of the Act. It is no doubt true that in this case, the Government earlier in G.O.

976 dated 15-7-1981, directed that the compensation will be paid out of the funds of the SIPCOT and there is no reference to any portion of the

compensation being paid out of public revenue. However, at the later stage, the Government has passed the impugned notification containing a

recital that the entire compensation will be paid out of the public revenue. It is not possible to accept the submission of the learned counsel for the

petitioners that the recitals contained in the impugned notification that the compensation will be paid out of public funds should be taken to be false

and incorrect merely because at an earlier stage, the Government directed the SIPCOT to pay the entire compensation. It may be that the

Government originally felt that the compensation should be paid out of the SIPCOT funds; but later the Government might have changed its opinion

and made a direction for the payment of the compensation out of the public revenues. The fact that at certain earlier stage, the Government formed

a certain opinion will not prevent them from changing that opinion when it came to the actual execution of the proposal to acquire the lands, nor will

it make the subsequent statement of the Government in the impugned notification as false. The question is whether the Government had, in fact,

decided to pay the compensation out of the public revenue when issuing the impugned declaration under S. 6 of the Act, without reference to its earlier direction. As a matter of fact, subsequent to the earlier notification directing the SIPCOT to pay the entire compensation for acquisition out of its funds the Government is said to have changed its opinion and not only directed the payment of compensation from and out of the public revenues but also made the necessary provision in the budget for the relevant financial year and actually placed the requisite funds at the disposal of the SIPCOT as cost of the lands to be acquired. A perusal of the said budget provision shows that the Government provided for an investment of a specified amount to SIPCOT for the purpose of acquisition of the lands during the relevant year. The learned counsel for the petitioners would, however, state that any investment made in SIPCOT by the Government cannot be treated as payment by the Government towards Compensation and by such investment, the Government will become a creditor to the extent of the amount invested and therefore, the amount of compensation cannot be taken to have been provided in the budget for payment of compensation. However, a perusal of the petitioner's affidavit itself shows that it is the Government who decided to establish an industrial complex in Gummudipoondi and the administration of the project was entrusted to the SIPCOT and the duty of acquiring the lands, developing them, providing the infrastructure, dividing the lands into industrial plots and assigning them to entrepreneurs for establishing various industries has been entrusted to SIPCOT, after making the necessary budgetary provisions. Such an admission is contained in paragraph 3 of the petitioner's affidavit. Thus, the petitioner's own case is that after the Government making a budgetary provision for establishing an industrial complex at Gummudipoondi the Work of establishing the same was entrusted to SIPCOT. Therefore, the SIPCOT is only acting as an agent of the Government in carrying out the project for which the Government has provided the necessary funds. Therefore, even as per the petitioners' own case, the compensation for the acquisition is to come out of the public revenue of the State Government; but the same has to be paid through SIPCOT, which has been nominated as the agency, for carrying out the project. Thus, we have to hold that the compensation is to come out of public revenues for the project in question and the same is to be paid through the agency of the

Government, viz, SIPCOT. In this view of the matter, we feel there is no substance in the third contention.

10. Coming to the fourth contention that since SIPCOT is a company incorporated under Indian Companies Act, the acquisition should have been

done under Part VII of the Land Acquisition Act, and not under Part 11 of the Act, it can be said that an answer to this question will depend upon

the source from where the compensation comes whether from the public revenue or whether it comes from the company. We have already held in

this case, the compensation is to come out of the public revenues, which is to be paid through the SIPCOT, which has been nominated as an

agency to carry out the project in question. In such cases, Part VII of the Land Acquisition Act cannot be invoked and only Part 11 of the Act

could be invoked. The decision in *Manubhai Jehtalal Patel and Another Vs. State of Gujarat and Others*, , supports the said view. In that case, the

Supreme Court has expressed the view that it is not correct to determine the validity of acquisition keeping in view the amount of contribution but

the motivation for making the contribution would help in determining the bona fide of acquisition. In that case it was contended that since the

acquisition is made for the benefit of Gujarat State Road Transport Corporation within the meaning of Companies Act, Part VII alone should have

been invoked and not Part IV of the Act. Rejecting this contention, the Supreme Court held that the acquisition being for a public purpose with the

contribution from the State revenues, the State was acquiring the land to carry out public purpose with the instrumentality of the Gujarat State

Road Transport Corporation and, it is not acquisition for a company with the funds exclusively provided by the company which would attract Part

VII of the Land Acquisition Act and that, therefore, neither Part VII of the Land Acquisition Act nor the Company Acquisition Rules would be

attracted. Following the principles enunciated in the said decision, we hold that in this case, the acquisition under Part 11 of the Land Acquisition

Act is legal and justified.

11. Though the petitioner's second, third and fourth contentions have failed, since the first contention that there is no application of mind before the

urgency provisions of the Land Acquisition Act were invoked and the enquiry under S. 5-A of the Act has been dispensed with mechanically by

the Government without application of their mind has been accepted, the part of the impugned notification containing the declaration under S. 6 of

the Act is quashed on that ground so far as the writ petitioners are concerned.

12. The writ appeals are, therefore, allowed. There will be no order as to costs. It is now open to the Government either to consider the question

of urgency or to have an enquiry conducted under S. 5-A.

13. Appeals allowed.